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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 286.

CITY OF CHICAGO, APPELLANT,

vs.

DARIUS O. MILLS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED MAY 4, 1906.

(20,245.)

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1 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

In Chancery. 26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY.

Messrs. Guthrie, Cravath & Henderson, Mr. William D. Guthrie, of counsel, for complainant.
Messrs. Herrick, Allen, Boyesen & Martin, local solicitors for complainant.
Mr. James Hamilton Lewis, corporation counsel.
Mr. Henry M. Ashton and Mr. David K. Tone, solicitors for City of Chicago.

2 Pleas in the Circuit Court of the United States for the Northern District of Illinois—Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable Peter S. Grosscup, Circuit Judge, of the Seventh Judicial Circuit, on Tuesday, the twenty-seventh day of February, in the year of our Lord one thousand nine hundred and six, being one of the days of the regular December term of said Court, 1905, and of our independence the one hundred and thirtieth year.

MARSHALL E. SAMPSELL, *Clerk.*

3 NORTHERN DISTRICT OF ILLINOIS, *ss:*

In Chancery. 26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY.

Be it remembered that on this day to-wit: the eighth day of June, 1903, came Darius O. Mills by his solicitors, Messrs. Guthrie, Cravath and Henderson and filed in the clerk's office of said Court a certain Bill of Complaint in words and figures following to-wit:

4 *Bill of Complaint.*

Circuit Court of the United States for the Northern District of Illinois, Northern Division. In Equity.

DARIUS O. MILLS, Complainant,
against
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Illinois, Northern Division:

Darius O. Mills, who is a resident and citizen of the State of California, brings this his bill of complaint, in behalf of himself and all other stockholders of The Peoples' Gas Light and Coke Company who are similarly situated and who may be entitled to avail themselves of the benefits of this suit, against the City of Chi-
5 cago, a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, and situate in the northern division of the northern district of said State, and said The People's Gas Light and Coke Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, having its principal office and place of business in the northern division of the northern district of said State.

And thereupon your orator complains and says as follows, viz:

I.

The People's Gas Light and Coke Company, hereinafter called "the defendant company," is a corporation duly organized and existing under and by virtue of a special act of the legislature of the State of Illinois, approved February 12, 1855, as amended by a special act of the legislature of said State, approved February 7, 1865.

Said act approved February 12, 1855, is in the words and figures following, to-wit:

An Act to Incorporate The People's Gas Light and Coke Company.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That Matthew Laflin, L. C. Paine Freer, A. G. Throop, D. A. Gage, Jno. S. Wallace, Geo. W. Snow, H. B. Bay and R. H. Foss and their associates be and they are hereby created a body politic and corporate, with perpetual succession, by the name and style of "The People's Gas Light and Coke Company," and by that name they and their successors shall be capable in law of contracting and being contracted with, suing and being sued, defending and being defended in all courts and places and in all matters and places whatsoever, with full powers to acquire, hold, occupy and enjoy all such real and personal estate as may be neces-

sary and proper for the construction, extension and usefulness
6 of the works of said Company, and for the management and good government of the same; and they may have a common seal, and the same may alter, break and renew at pleasure.

§ 2. The corporation hereby created shall have full power and authority, forthwith upon their due organization under this act, to proceed to the erection of the necessary works for the manufacture of gas and coke, within said City of Chicago, and on and after the 12th day of February, A. D. 1859, to manufacture and sell gas, to be made from any or all the substances or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of lighting the City of Chicago or the streets thereof and any buildings, manufactories, public places or houses therein contained, and to erect all necessary works and apparatus as aforesaid; and on and after the said 12th day of February, 1859, or sooner by and with the consent of the Chicago Gas Light and Coke Company, to lay pipes for the purpose of conducting the gas in any of the streets or avenues of said city, with the consent of the City Council: *Provided*, that no permanent injury or damage shall be done to any street, lane or highway in said city. The real estate which this corporation is entitled to hold shall not exceed in value $100,000.

§ 3. The capital stock of said Company shall not exceed $500,000, to be subscribed for and paid in such proportions as shall be prescribed by the by-laws and rules for regulating the concerns of said Company as they shall think proper and necessary respecting the management and disposition of the stock, property and estate of said Company, the duties of the officers and agents to be employed, the number and election of directors, and all such matters as appertain to the concerns of said Company.

§ 4. It is an express provision of the foregoing act of incorporation that the said Company shall furnish and supply the City of Chicago, for all its public uses, at the election of the proper authorities of said city, a sufficient supply of gas, at a rate not exceeding $2 per thousand feet; and the inhabitants of said city, at a rate not exceeding $2.50 per thousand feet.

7 The said amendatory act, approved February 7, 1865, is in the words and figures following, to wit:

An Act to Amend an Act Entitled "An Act to Incorporate the People's Gas Light and Coke Company," approved February 12, 1855.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the second section of said act be and the same is hereby so amended as to read as follows, viz.: The corporation hereby created shall have full power and authority forthwith to proceed to the erection and maintenance of the necessary works for the manufacture of gas and coke within said City of Chicago, and to manufacture, supply and sell gas, to be made from any and all substances or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of lighting the City of Chicago, any streets, buildings, manufactories,

public places or houses therein contained, and to erect and use all necessary works and apparatus for such purposes aforesaid, and with the consent of the Common Council of said City, to lay down and use all necessary pipes for the conducting of gas in and along any of the streets, alleys, avenues or public squares of said City: *Provided*, that no permanent injury or damage shall be done to any such street, alley, avenue or public square by the laying down of any such pipes.

§ 2. That section three of the said act be and the same is hereby so amended as to read as follows, viz.: The capital stock of said Company shall be five hundred thousand dollars, and may be increased from time to time, at the pleasure of said corporation; it may be divided into such shares, subscribed for, paid and transferred in such proportions and manner as shall be prescribed by the by-laws and regulations of said Company.

§ 3. All the corporate powers of said corporation shall be vested in and exercised by a Board of Directors, and such officers and agents as said board shall appoint. The Board of Directors shall consist of not less than three nor more than five stockholders, who shall be chosen by the stockholders at such time and in such manner as the said corporation shall by its by-laws prescribe, and shall hold their office until their successors are elected and qualified, and may fill any vacancies which may happen in the Board of Directors by death, resignation or other wise; they may adopt such by-laws, rules and regulations for the government of said corporation and the management of its affairs and business as they may think proper, not inconsistent with the laws of this State, and the fourth section of said act is hereby repealed; but ten years after the passage of this act the Common Council of the City of Chicago may, by resolution or ordinance, regulate the prices charged by said Company for gas; but said Common Council of the City of Chicago shall, in no case, be authorized to compel the said Company to furnish gas at a less rate than three dollars per thousand feet.

§ 4. The said corporation is hereby authorized to borrow money and to mortgage or lease any of its property or franchises.

§ 5. This act shall be deemed a public act, and noticed as such by all courts without pleading, and take effect from and after its passage.

II.

After the passage of said act, approved February 12, 1855, and said amendatory act, approved February 7, 1865, the defendant company acted upon the privileges and powers therein granted, and accepted the same, and, in reliance thereon and with the consent of the City of Chicago, constructed and erected gas works and laid pipes in said city for the distribution and delivery of gas to consumers thereof in said city and to said city, as hereinafter specified. The said consent of the City of Chicago was expressed in and by a certain ordinance adopted by the Common Council of said city on August 30, 1858, in the words and figures following, to wit:

Be it ordained by the Common Council of the City of Chicago:

SECTION 1. That permission and authority be, and the same are

hereby granted to The People's Gas Light and Coke Company,
9 of the City of Chicago, and State of Illinois, to lay their gas mains, pipes, feeders and service pipes in any of the streets, avenues, highways, public parks or squares throughout said city subject at all times, however, to the resolutions and ordinances of the Common Council of said city; *Provided*, that said Company when they shall open the ground to lay any pipe, or for any other purposes whatever, they shall restore the streets, pavements and sidewalks to a condition satisfactory to the city superintendent, with all convenient dispatch, and no more of any street or alley shall be opened or encumbered at any one time or in any one place, nor shall any street or alley be suffered to remain open or encumbered for a longer period than shall be strictly necessary to enable said Company to proceed with their work; and said Company shall be liable for all damages which may result from, or by reason of, opening or encumbering any street, alley or sidewalk in said City of Chicago; and *Provided further*, that whenever said Company shall desire to lay their pipe, or do other work in any of the principal streets of said city, before they commence doing so they shall consult the mayor or city superintendent of public works, and unless the mayor or superintendent consent to such work being done at the particular time, they shall not proceed with such work on any such principal street, without the express permission of the Common Council of the said City of Chicago; and *Provided further*, that nothing herein contained shall be construed to conflict with any rights or privileges heretofore given by the Common Council to the Chicago Gas Light and Coke Company, or in conflict with the provisions contained in the act of incorporation of the People's Gas Light and Coke Company, to first obtain the consent of the Chicago Gas Light and Coke Company, if pipes are laid previous to February 12, A. D. 1859.

III.

In pursuance of the privileges and powers granted in and by said charter, and in carrying out and performing the duties and obligations imposed by said charter, the defendant company has in-
10 vested many millions of dollars in erecting and constructing gas works, plants and appliances, and in laying down pipes, mains, feeders and appurtenances, to enable it to carry on the business of manufacturing and furnishing gas to consumers thereof throughout the City of Chicago; and it has continuously for over thirty-nine years last past remained and is now engaged in the business of manufacturing, selling and distributing said gas by means of mains, pipes, feeders and appliances laid in the streets of said city; and the contract by and between the defendant company and the State of Illinois, as embodied in said statutes above mentioned, is in full force and effect, and has not been repealed, annulled, cancelled or amended. The defendant company had invested its capital and funds in the development of its business in the City of Chicago on the date of the filing of this bill of complaint in real estate in said city to the value of upwards of ten million dollars, and in personal property in said city to the value of upwards of ten million dollars;

it has many buildings, factories, retorts, plants and apparatus for the manufacture, sale and distribution of gas in the City of Chicago, and in all parts and divisions thereof; and it owns, maintains and operates upwards of seventeen hundred miles of pipes and mains laid in the streets, alleys, avenues, highways and public squares of said city.

The defendant company has now and since prior to January 1, 1900, has had an authorized capital stock of $35,000,000, divided into 350,000 shares of the par value of $100 each, of which $32,969,100 par value is now issued and outstanding; and there are now outstanding $34,496,000 face value, of mortgage bonds for which it is liable. Prior to the first day of January, 1898, your orator became the owner and registered holder of more than twenty thousand shares of the capital stock of the defendant company, and
11 ever since has been and now is the owner and registered holder of said shares aggregating that amount, and also owns and holds a large amount of the mortgage bonds of said company.

IV.

For some years prior to the amendment of the defendant company's charter by the said act of February 7, 1865, and for several years thereafter, the rate charged by it for gas to consumers thereof in the City of Chicago was the net rate of $3.75 per thousand cubic feet; but it has from time to time decreased said rates, and since prior to January 1, 1896, the price charged for illuminating gas manufactured and sold by it in said city to the residents thereof and to said city has been the net rate of one dollar per thousand cubic feet. The said reductions from time to time made by the defendant company to the net rate of one dollar per thousand cubic feet have been made as the free will and voluntary act of the defendant, and have not been by reason of any statute of the State of Illinois or of any ordinance of the City of Chicago compelling or attempting to compel it to make any reduction in the price charged for gas in said city.

The City of Chicago itself is, and for many years last past has been, a customer of the defendant company, in the same sense and in the same way and under the same legal conditions as each and every other customer of the defendant company in said city, and its bills as a consumer of the gas manufactured and sold by the defendant during the year 1899, amounted to upwards of five hundred and fifty thousand dollars, and during the year 1900 amounted to upwards of four hundred and ninety thousand dollars.

12 V.

Pursuant to the power and authority granted to and conferred upon gas companies doing business in the same city, town or village in the State of Lllinois, by an act of the General Assembly of said State entitled, "An act in relation to gas companies," approved June 5th, 1897, and of the power granted to and conferred upon the defendant company in and by its charter, as aforesaid, the defendant company, for a valuable consideration, acquired and took over all the gas mains, pipes, feeders, service pipes, connections

and appurtenances and all the manufacturing plants, buildings, machinery and property of the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, and the Chicago Economic Fuel Gas Company, in August, 1897, and of the Mutual Fuel Gas Company and the Hyde Park Gas Company, in January, 1898, and of the Calumet Gas Company, in November, 1898. All the properties of the said gas companies so acquired and taken over by the defendant company, at the time of their transfer and acquisition, were situated within the corporate limits of the City of Chicago; and thereupon said companies were consolidated and merged into the defendant company and ceased to manufacture and supply gas to consumers thereof in said city. All of said gas companies, at the time of such acquisition, were corporations created by the laws of the State of Illinois and, under authority of said laws, were severally engaged in the manufacture, sale and distribution of gas in various sections of the City of Chicago. The Consumers' Gas Company, the Equitable Gas Light and Fuel Company and the Chicago Economic Fuel Gas Company fur-
13 nished gas only in a portion of the south division of the City of Chicago. The Chicago Gas Light and Coke Company supplied gas in parts of the south and north divisions of the City of Chicago, and had laid some pipes and mains in the west division of said city. The Suburban Gas Company furnished gas in part of the territory formerly comprised within the Town of Lake View. The Mutual Fuel Gas Company and the Hyde Park Gas Company supplied gas in a part of the territory formerly comprised in the Village of Hyde Park. The Calumet Gas Company supplied gas in a certain other part of the territory formerly comprised in the Village of Hyde Park. The Lake Gas Company furnished gas in a part of the territory formerly comprised within the corporate limits of the Town of Lake. The Illinois Light, Heat and Power Company did not distribute any gas to consumers; but shortly after the erection of its plant the same was leased to the defendant company by whom it had since been operated. The defendant company distributed gas chiefly in the west division of the City of Chicago, although its pipes and mains extended into the south division of said city. The plants, pipes, mains, feeders and ap-liances of all of said gas companies together, at said time, were insufficient to supply the gas necessary to light the streets, alleys, highways, public squares and places of said City of Chicago and to supply all of the inhabitants of said city who desired to be furnished with gas.

VI.

The Chicago Gas Light and Coke Company was organized under a special act of the State of Illinois, entitled "An act to incorporate the Chicago Gas Light and Coke Company," approved February 12, 1849, as amended by an act approved February 9, 1855, in the

words and figures set forth in Exhibit A hereto annexed and
14 made a part hereof. The Hyde Park Gas Company was organized on May 26, 1871, under a general act of said State entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes in the State of Illinois," approved February 18, 1857, and, by ordinances adopted June 24, 1871, November 25, 1871, and March 15, 1875, the Village of Hyde Park authorized said company to occupy the streets and other public places of said village, now within the City of Chicago, for the distribution of gas, in the words and figures set forth in Exhibit B hereto annexed and made a part hereof. All of the remainder of said gas companies other than the defendant company were organized subsequent to 1870 under the general incorporation laws of the State of Illinois. The Consumers' Gas Company was organized on November 21, 1886, and, as successor to the Consumers' Gas, Fuel and Light Company, was authorized to sell and distribute gas in the City of Chicago, by ordinance of said city adopted April 28, 1882, in the words and figures set forth in Exhibit C hereto annexed and made a part hereof. The Equitable Gas Light and Fuel Company of Chicago was organized on August 3, 1885, and was authorized to sell and distribute gas in the City of Chicago, by an ordinance of said city adopted August 10, 1885, in the words and figures set forth in Exhibit D hereto annexed and made a part hereof. The Lake Gas Company was organized on July 5, 1881, and, as successor of the Northwestern Gas Works Company, was authorized to sell and distribute gas in the Town of Lake, now within the City of Chicago, by ordinance of said town adopted July 5, 1881, in the words and figures set forth in Exhibit E hereto annexed and made a part hereof. The Suburban Gas Company was organized on November 5, 1884, and was authorized to sell and distribute gas in the Town of Lake View, now within
15 the City of Chicago, by an ordinance of said town adopted October 29, 1884, accepted November 17, 1884, in the words and figures set forth in Exhibit F hereto annexed and made a part hereof. The Chicago Economic Fuel Gas Company was organized on December 9, 1889, and was authorized to sell and distribute gas in the City of Chicago by ordinances of said city adopted December 22, 1890, and July 13, 1891, in the words and figures set forth in Exhibit G hereto annexed and made a part hereof. The Mutual Fuel Gas Company was organized on April 25, 1889, and acquired from Hank & McClary the right to sell and distribute gas in the Village of Hyde Park, now within the City of Chicago, which right had been granted to said Hank & McClary by an ordinance of said village adopted March 21, 1889, in the words and figures set forth in Exhibit H hereto annexed and made a part hereof. The Calumet Gas Company was organized in 1885, and was authorized to sell and distribute gas in the Village of Hyde Park, now within the City of Chicago, by an ordinance of said village adopted November 9, 1885, in the words and figures set forth in Exhibit I hereto annexed and made a part hereof.

At the time of the acquisition and taking over by the defendant

company of said plants, pipes, mains and property from said other gas companies, said companies were indebted upon legal obligations secured by mortgages or deeds of trust upon the property of said companies, severally executed and delivered by said companies, and which obligations amounted in the aggregate to the sum of over $19,000,000 and were assumed by the defendant company, in addition to other valuable considerations paid for said properties.

VII.

During the year immediately preceding the first of the acquisitions of the properties of gas companies, as aforesaid, under
16 the said act of 1897, the defendant company was extensively engaged in the business of furnishing gas to consumers thereof in the City of Chicago, and charged and received for all gas sold by it the net rate or price of one dollar per thousand cubic feet. Since the acquisition of said properties it has uniformly charged the same rate or price for all gas sold by it in said city, and has not increased the price charged by it for gas of the quality furnished to consumers during any part of the year preceding any of said acquisitions, and the gas so supplied and sold by the defendant company has been better in quality and of higher candle-power than the gas theretofore sold by the companies, the plants, pipes and mains of which, were as aforesaid acquired and taken over by it.

VIII.

In addition to the defendant company and the gas companies whose properties were acquired by it as aforesaid, there were at the time of such acquisition and are now other gas companies engaged in the manufacture, sale and distribution of gas in the City of Chicago, as well as a number of electric light companies engaged in distributing electric light to the inhabitants of said city; and said city itself has built and maintained and operates a large electric light plant, by means of which a number of the streets of said city are lighted.

IX.

The City of Chicago had full knowledge of the acquisition and taking over by the defendant company of the properties aforesaid and of the consolidation and merger of said companies into the defendant company, and made no objection thereto; but, on the contrary, since August, 1897, said city by the City Council thereof, has repeatedly recognized the fact that the defendant company
17 had acquired the properties of said gas companies, by compelling or ordering the defendant company to do various acts in connection with the plants so acquired and the territory occupied by said several companies, and among other things as follows:

1. At a meeting of the City Council of the City of Chicago, held May 2, 1898, the following order was passed:

Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to put in gas stubs on Cornelia street, from Western avenue to Rockwell street, and on Cortez street, from Western avenue to California avenue.

2. At a meeting of said city council, held July 6, 1898, the following order was passed:

Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to place gas mains in Blucher street, from Lill place to Wood street.

3. At a meeting of said city council, held July 11, 1898, the following order was passed:

Ordered, That the commissioner of public works be and he is hereby directed to order the People's Gas Company to lay their mains and other pipes in Beach court, south of Irving Park boulevard, in order that the contractor may proceed with his work.

5. At a meeting of said city council, held November 6, 1899, the following order was passed:

Ordered, That the commissioner of public works be and he is hereby directed to have the People's Gas Light and Coke Company lay the service pipes and mains in Evanston avenue, from Devon avenue north to city limits.

6. At a meeting of said city council, held November 20, 1899, the following order was passed:

Ordered, That the People's Gas Light and Coke Company
18 be and is hereby ordered to lay gas mains in the following streets, to wit, Herndon street, from Beldon avenue south to Garfield avenue, north.

9. At a meeting of said city council, held January 3, 1900, the following order was passed:

Ordered, The People's Gas Light and Coke Company is hereby directed and instructed to lay gas mains in Ridgeway avenue, from Armitage avenue to Courtland avenue.

10. At a meeting of said city council, held January 8, 1900, the following order was passed:

Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in Ridgeway avenue, from Armitage avenue to Courtland street.

11. At a meeting of said city council, held February 5, 1900, the folowing order was passed:

Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay their gas mains in Turner avenue, between Twenty-third and Twenty-sixth streets, as the street is now being graded, preparatory to paving.

12. At a meeting of said city council, held June 25, 1900, the following order was passed:

Ordered, That the commissioner of public works order the People's Gas Light and Coke Company to lay gas mains on Central Park

avenue between Douglass boulevard and Twelfth street before street is paved.

13. At a meeting of said city council, held June 25, 1900, the following order was passed:

Ordered, That the People's Gas Light and Coke Company be and they hereby are directed to lay gas mains and pipes in Wrightwood avenue, at all places now in process of being paved, and not already supplied with gas mains and pipes.

19 14. At a meeting of said city council, held July 9, 1900, the following orders were passed:

Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in Melrose street, from Kimball avenue to Drake avenue, and in School street, from Kimball avenue to 500 feet west.

Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains at once in Milwaukee avenue from Allen avenue to Belmont avenue.

15. At a meeting of said city council, held November 12, 1900, the following order was passed:

Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in Monticello avenue, between Armitage avenue and Courtland street.

16. At a meeting of said city council, held January 7, 1901, the following order was passed:

Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in North Kedzie avenue, between School street and Roscoe street.

17. At a meeting of said city council, held February 18, 1901, the following order was passed:

Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains at once in the following named streets:

North Springfield avenue, from Irving Park boulevard to West Berteau avenue.

North Avers avenue, from Irving Park boulevard to West ... rose avenue.

North Harding avenue, from Irving Park boulevard to West Cullom avenue.

North Ridgeway avenue, from Elston avenue to West Montrose avenue.

20 North Lawndale avenue, from West Belle Plaine avenue to West Montrose avenue.

North Monticello avenue, from Irving Park boulevard to West Montrose avenue.

North 40th avenue, from Elston avenue to West Montrose avenue.

18. At a meeting of said city council, held March 11, 1901, the following order was passed:

Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company

to lay gas mains in Elston avenue, from Montrose avenue to North 43d avenue; in Hamlin avenue, from Irving Park boulevard to Montrose avenue, and in Melrose street, from Elston avenue to California avenue.

In each and all of the streets and avenues above mentioned the said defendant company had, prior to said ordinances, no mains or service pipes nor had any of the said companies whose property was so acquired by the defendant company as aforesaid, but a number of such streets and avenues were within or contiguous to territory theretofore occupied by said gas companies whose properties were acquired as aforesaid. The defendant company promptly and at great expense complied with all said ordinances and laid its mains and service pipes; and it has ever since supplied gas to the City of Chicago and to its inhabitants and citizens resident along and in said streets and avenues.

X.

Since August, 1897, from time to time, the defendant company has expended large sums of money in acquiring lands in various sections of the City of Chicago, upon which it has placed its retorts, buildings, holders and other apparatus, and has expended large sums of money in laying down gas mains, pipes, feeders and other appli-
ances and appurtenances throughout said city, and in all
21 sections thereof, and in maintaining, improving and extending its system of pipes, mains, feeders and plants, and in carrying out and performing the orders and directions contained in the said several resolutions, orders and ordinances of the City Council of said city hereinbefore set forth, and otherwise in connection with the perfecting of its system of plants, mains, pipes, feeders and appurtenances. There are several hundreds of miles of gas pipes in the streets of said city acquired as aforesaid by the defendant company from said other companies which are no longer available for use in distributing gas, because they were laid at an early day, were small in size, and because of wear and decay; and said pipes are not now and never can be used for distributing gas to consumers. In all such cases the defendant company has put down and maintains new and enlarged pipes and mains. Upward of five hundred miles of gas mains and pipes have been newly laid by the defendant company in all sections and divisions of the City of Chicago since the acquirement of the aforesaid properties, in extending, enlarging, improving and bettering the plant and system of said company, until, at this time, its system of pipes, mains, feeders and appliances has been largely remodeled, relaid and improved.

In order to enable the defendant company to comply with the duties and obligations by its said charter imposed, and in extending and enlarging its said gas works and system, it has, since August, 1897, rebuilt and enlarged all of the manufacturing plants so as aforesaid acquired from other companies; it has acquired additional real estate and built and constructed additional buildings thereon, and installed in the buildings so erected, and in the buildings acquired as aforesaid, new and improved machinery and appliances

for the production and distribution of gas; and it has ex-
22 pended in doing said work, and in extending, enlarging, repairing and connecting its system of pipes, mains, services and feeders, upwards of five millions of dollars.

XI.

The City Council of the City of Chicago, representing said city, on the 15th day of October, 1900, without investigation or judicial proceedings of any kind, and without giving or permitting a hearing of any sort to the defendant company, passed a certain ordinance, in words and figures following — wit:

Be it Ordained by the City Council of the City of Chicago:

SEC. 1. That no corporation, company or companies, firm or persons manufacturing, selling, supplying or distributing gas in the City of Chicago for illuminating or for fuel purposes shall charge, exact, demand or collect from any consumer thereof more than the sum of seventy-five (75) cents per one thousand (1,000) cubic feet of gas consumed or used. Said sum of seventy-five (75) cents per one thousand (1,000) cubic feet of gas shall be the net price charged, exacted, demanded or collected from each consumer. Manufactured gas so furnished shall afford a light of not less than twenty (20) candle power, to be measured and ascertained at the place of consumption in said city by the most modern appliances known to science for measuring the candle power of illuminating gas.

Provided however, that any corporation, company or companies, firm or person distributing or selling gas for fuel or illuminating purposes in the City of Chicago may, in addition to said seventy-five (75) cents per one thousand cubic feet of gas furnished to such consumer, add a penalty of not exceeding ten (10) cents for each one thousand (1,000) cubic feet of gas so supplied to such consumer for delinquency or non-payment of the bill, statement or charge of said corporation, company or companies, firm or person after ten days from the date at which said bill, statement or charge is made and furnished to such consumer.

23 SEC. 2. That any company, corporation, person or persons who shall remove any meter or meters from the house, store, factory or premises of any consumer of gas in the City of Chicago, against the will and consent of any such consumer of gas who is willing to pay for gas furnished him, it or them by any such company, corporation, person or persons, and tenders the amount due at the price established and fixed in section 1 of this ordinance, shall be subject to a penalty of not less than twenty-five ($25) nor more than two hundred ($200) dollars for each and every offense; *Provided, however*, that any company, corporation, person or persons furnishing gas to consumers in the City of Chicago shall have the right to remove any meter or meters for the purpose of repairing the same, on condition that such meter or meters so removed shall be replaced or a new one substituted in its place within twenty-four (24) hours of the time of the removal of any such meter or meters.

SEC. 3. That any company, corporation, person or persons who shall, in violation of the provisions of the preceding sections, charge or require the City of Chicago, or any citizen thereof, or any consumer of gas therein, to pay for gas furnished to it or them, or either of them, a sum in excess of seventy-five (75) cents per thousand cubic feet, or who shall furnish to the said city of Chicago or any citizen thereof, manufactured gas less than twenty (20) candle power shall be subject to a penalty of not less than twenty-five dollars ($25), nor more than two hundred dollars ($200) for each and every offense.

SEC. 4. This ordinance shall be in full force and effect from and after the 2d day of January, A. D. 1901; *Provided*, that said ordinance shall not go into effect until it has been duly published, as provided by law.

Said ordinance was not afterwards vetoed, repealed, modified or amended, and remains in effect as an ordinance of the City Council of said City of Chicago and a law of the State of Illinois.

24 XII.

Your orator is informed and believes, and therefore avers, that the legislative power and authority to enact said ordinance of October 15, 1900, was and is by the City of Chicago and its City Council grounded upon the provisions of the charter of the defendant company hereinbefore set out, and also upon the 13th and 66th subdivisions of section 1, article V, chapter 24 of the Revised Statutes of the State of Illinois, which chapter is known as the General City Incorporation Act; and your orator is advised by counsel and therefore avers and claims that said ordinance of October 15, 1900, in its enactment and threatened enforcement under said supposed legislative authority, constitutes an impairment by a law of the State of Illinois of the obligations of the contract contained in the aforesaid charter of the defendant company between said company and said State, and is therefore in contravention of section 10 of article I of the Constitution of the United States.

Your orator is further advised by counsel, and therefore avers and claims that the legislature of the State of Illinois has not at any time authorized or empowered the City Council of the City of Chicago to fix or regulate the prices to be charged by the defendant company for gas furnished, supplied or sold by it, and that said ordinance was passed without authority and is therefore void and of no force or effect.

XIII.

The City of Chicago announces and has threatened that it will proceed to enforce the said ordinance against the defendant company in the event of any violation of the terms thereof by it if and whenever the injunction hereinafter referred to shall be dissolved or vacated; and numerous citizens of the City of Chicago have re-
25 fused to pay for gas except as in said ordinance provided and have threatened that in the event of the failure to comply with the terms of said ordinance so passed by the said City Council

as aforesaid, they will immediately take steps, by means of prosecutions in the courts of the State of Illinois, to enforce against the defendant company the penalties provided in said ordinance.

The defendant company has now upwards of three hundred thousand customers in the City of Chicago, in addition to the said city itself, to whom it is daily selling and distributing gas, and during the years 1900, 1901 and 1902, it sold and delivered to such customers, at the net rate of one dollar per thousand cubic feet, at the rates specified, an enormous amount of gas in each year, aggregating many hundred millions of cubic feet per annum; and on the date of the passage of said ordinance, it was engaged in selling gas to such customers, including said city.

Many of the defendant company's said customers are people of small means and are financially irresponsible; it renders to each of its customers monthly statements for gas consumed by them during the preceding month, and collects therefor within a short time thereafter; unless said bills are promptly paid it discontinues the supply of gas to such customers, and that is the only method by which it is enabled to avoid great loss, by reason of the failure or inability of many of said customers to pay the bills for the gas consumed by them. If said ordinance should be enforced or if the City of Chicago should be permitted to begin prosecutions against the defendant company for failure to comply with the terms of said ordinance, a large number of customers would decline to pay the price fixed by the defendant company as aforesaid, and would refuse to pay anything whatsoever over and above the sum fixed by the said
26 city in said ordinance. If said defendant company should attempt to remove the meters in the houses of such customers or should attempt to discontinue the supply of gas to them, it would immediately be subjected to a multiplicity of prosecutions on the part of said city; and if the defendant company should permit the bills of said customers to run until the final determination of such suit or suits as the said city might bring for failure to comply with the terms of the ordinance aforesaid, the outstanding bills due and payable to the defendant company would aggregate several million dollars, the exact amount of which your orator is at present unable to calculate. By reason of the financial irresponsibility of a large number of said customers, the defendant company, in the event that it finally succeeded in defeating the said prosecutions, would be unable to collect from such customers the amount of such outstanding indebtedness; and thereby the defendant company would suffer enormous loss, the exact amount of which your orator is unable to calculate, and which it is impossible to calculate, but which would amount to several million dollars, and the damage to the defendant company and to your orator would be irreparable and incalculable.

XIV.

Your orator further shows that the necessary operation of said ordinance of October 15, 1900, will be to reduce the amount of the gross receipts of the defendant company one-fourth of the present amount, and its net profits more than one-half, and the defendant

company and its stockholders will thereby suffer irretrievable loss for each day's enforcement of said ordinance in excess of $5,000 per day; that the penalties in said ordinance were intended and calculated to coerce the defendant company and its officers to acquiesce therein; that a refusal or failure to observe and comply with
27 said ordinance, if only for the purpose of having the question tested in good faith in a court of law, would involve the risk of absolute ruin of the defendant company, in that the company has over three hundred thousand (300,000) customers in the City of Chicago, as aforesaid, and that the ordinance imposes "a penalty of not less than twenty-five dollars ($25), nor more than two hundred dollars ($200) for each and every offense;" in other words, that the possible penalties under said ordinance would range from seven million five hundred thousand dollars ($7,500,000) to sixty million dollars ($60,000,000) for each day's violation of the ordinance dependent solely upon the discretion of magistrates in the City of Chicago, each and every one of whom, as your orator is informed and verily believes, is a consumer of gas and a customer of the defendant company. Your orator is advised by counsel and therefore avers and claims that there is no remedy except in equity to adequately or completely test the validity of said ordinance, and that in the absence of such remedy in equity, the penalties provided in said ordinance would be unreasonable and confiscatory and deprive the defendant company of its liberty of contract and of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

XV.

Your orator further shows that heretofore and on or about the 31st day of December, 1900, the defendant company began a suit in equity in the Circuit Court of the United States for the Northern District of Illinois against the City of Chicago wherein and whereby it was, among other things, prayed that an injunction issue restraining the City of Chicago from enforcing said ordinance of October 15, 1900, upon the ground that the same was void and consti-
28 tuted an impairment of the obligation of the defendant company's charter contract; that thereupon a writ of temporary injunction was issued against the said City of Chicago restraining it from enforcing said ordinance during the pendency of said action; that the defendant City of Chicago demurred to said bill; that thereafter such proceedings were had in such cause on the hearing of the issue of law raised by said demurrer that a final decree was entered dismissing the bill of complaint of said The People's Gas Light and Coke Company for want of jurisdiction in this court over the cause of action in said amended bill of complaint set forth; that an appeal was allowed in said suit to the Supreme Court of the United States, and is now pending and undetermined in said Supreme Court of the United States, and that pending said appeal this court continued the preliminary injunction so issued as aforesaid upon the giving of a bond by the defendant company in the penal sum of $600,000.

Your orator is advised by counsel and so charges that the final decree in said suit does not constitute *res adjudicata*, because the bill of complaint was dismissed for want of jurisdiction, and not upon the merits, and that said decree does not, therefore, determine and adjudge the rights of the defendant company in the premises.

XVI.

This suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

On the 16th day of December, 1902, your orator addressed a communication to the board of directors of the defendant company requesting them to institute and prosecute this suit in the name of the corporation, caused said communication to be presented to said board of directors at a regular meeting thereof, and requested and demanded that said board institute this suit, but said board
29 refused and still refuses so to do on the alleged ground that any further litigation with the City of Chicago than that already pending would be detrimental to the best interests of the company; and thereupon your orator made similar application to the stockholders and requested and demanded that they direct the institution and prosecution of this suit, and presented to said stockholders in regular annual meeting assembled on February 10, 1903, a resolution reciting his said letter to the board of directors and its said refusal to institute suit and directing the institution of this suit, but said stockholders voted to reject said resolution and refused and still refuse to direct the institution of this suit, on the alleged ground that any litigation with the City of Chicago, further than that already pending, would be detrimental to the best interests of the company; and your orator is unable to procure the institution or prosecution of this suit in the name of the defendant company. A true copy of said letter is hereto attached as an exhibit, made a part hereof and marked Exhibit J. The institution of this suit has been delayed since February, 1903, by the enforced absence of your orator's counsel, Mr. Guthrie, in Europe.

XVII.

To the end, therefore, that your orator may have that relief which he can only obtain in a court of equity, and that the said defendants may each answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by your orator, he now prays:

1. That it be adjudged and decreed that said ordinance of the City of Chicago of October 15, 1900, is illegal and void because in contravention of section 10 of article I of the Constitution of the United States, and further, because enacted without valid legal authority from the State of Illinois.

30 2. That it be adjudged and decreed that your orator has no adequate remedy at law for the injury which would result

from the threatened enforcement of said ordinance, and that said injury would be irreparable.

3. That it be adjudged and decreed that your orator be granted a writ of injunction, issuing out of and under the seal of this Honorable Court, against the City of Chicago, restraining and enjoining it, its officers, agents, servants and employees, and any and every person acting under and by virtue of the authority of said ordinance from in any way enforcing or attempting to enforce said ordinance or any of the provisions thereof against the People's Gas Light and Coke Company, and against the People's Gas Light and Coke Company restraining and enjoining it, its officers, servants, agents and employees from accepting or complying with the aforesaid ordinance of October 15, 1900, or any of the provisions thereof, and from submitting thereto, and from reducing the price of gas to seventy-five cents per thousand cubic feet under compulsion thereof.

Your orator further prays that, if at any time hereafter and prior to the final hearing hereof, any consumers of gas or other customer of the defendant company or other person in the City of Chicago shall attempt to enforce the provisions of said ordinance or otherwise act or proceed thereunder, such persons be made parties defendant hereto and each of them be enjoined and restrained as heretofore prayed; and that your orator have such other or further or different relief as to the court may seem meet and the nature of the case may require.

Your orator further prays that your Honors grant unto your orator a prit of *subpœna ad respondendum,* issuing out of and under the seal of this Honorable Court, to be directed to the said de-
31 fendants, commanding them and each of them on a certain day and under a certain penalty, to be therein inserted, to appear before your Honors in this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand —, do, perform and abide by such further order and decree as to your Honors shall seem meet; and also that a writ of provisional injunction to the same purport, tenor and effect as is hereinbefore set forth and prayed be granted during the pendency of this action.

And your orator will ever pray, &c.

DARIUS O. MILLS,
GUTHRIE, CRAVATH & HENDERSON,
Solicitors for Complainant.

52 William Street, New York, N. Y.

GUTHRIE, CRAVATH & HENDERSON,
WILLIAM D. GUTHRIE,
WILLIAM D. GUTHRIE,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

Darius O. Mills, being duly sworn on oath, deposes and says, that he is the complainant named in the foregoing bill of complaint and who has subscribed to the same; that he has read the foregoing bill of complaint and knows the contents thereof; that the matters therein set forth are true of his own knowledge, except as to those averred on information and belief, and that as to those matters he verily believes it to be true.

DARIUS O. MILLS.

Subscribed and sworn to before me this 6th day of June, A. D. 1903.

JAMES L. MOCK,
[SEAL.] *Notary Public, Kings County, N. Y.*

Certificate filed in New York County.

32 STATE OF NEW YORK, *County of New York, ss:*

I, Thomas L. Hamilton, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify, that James L. Mock has filed in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public for the County of Kings with his autograph signature, and was at the time of taking the annexed depositions, duly authorized to take the same, and that I am well acquainted with the handwriting of said Notary Public, and believe that the signature to the annexed certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County the 6th day of June, 1903.

[SEAL.] THOS. L. HAMILTON, *Clerk.*

EXHIBIT A.

An Act to Incorporate the Chicago Gas Light and Coke Company (Approved February 12, 1849).

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That H. L. Stewart, W. S. Bennett, F. T. Sherman, P. L. Updike, P. Page, and their associates, be, and they are hereby created a body politic and corporate, with perpetual succession, by the name and style of "The Chicago Gas Light and Coke Company," and by that name they and their successors shall be capable in law of contracting and being contracted with, suing and being sued, defending and being defended, in all courts and places, and in all matters whatsoever, with full powers to acquire, hold, occupy, and enjoy all such real and personal estate as may be necessary and proper for the construction, extension, and usefulness of the works of said company, and for the management

and good government of the same; and they may have a common seal, and the same may alter, break, and renew at pleasure.

§ 2. The corporation hereby created shall have full power and authority to manufacture and sell gas, to be made from any or all of the substances, or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of lighting the City of Chicago, or the streets thereof, and any buildings, manufactories, public places, or houses therein contained; and to erect all necessary works and apparatus, and to lay pipes for the purpose of conducting gas in any of the streets or avenues of said city; *Provided*, that no permanent injury or damage shall be done to any street, lane, or highway in said city. The real estate which this corporation is entitled to hold shall not exceed in value fifty thousand dollars.

§ 3. The stock of said company shall not exceed three hundred thousand dollars, to be divided into shares of twenty-five dollars, to be subscribed for and paid in such proportions as shall be prescribed by the by-laws and rules for regulating the concerns of said company as they shall think proper and necessary respecting the management and disposition of the stock, property, and estate of said company, the duties of the officers, artificers, and agents to be employed, the number and election of directors, and all such matters as appertain to the concerns of said company. Said company shall have the exclusive privilege of supplying the City of Chicago and its inhabitants with gas for the purpose of affording light for ten years.

An Act to Amend an Act Entitled "An Act to Incorporate the Chicago Gas Light and Coke Company" (Approved February 9, 1855).

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, The Chicago Gas Light and Coke Company is hereby authorized to increase the capital stock of said company one million of dollars, at such times and in such manner as the board of directors shall from time to time direct.

Said company is also authorized to borrow such an amount of money for the purpose of constructing, carrying on and completing its works, upon such terms as the board of directors shall judge best, and for such purpose may issue its bonds and mortgage its property; and all bonds heretofore issued for such purpose, and all mortgages executed to secure the same by said company, are hereby legalized.

Said company shall also have the right to purchase and hold such an amount, in value and extent, of real estate in the City of Chicago, as may be necessary for its business, and to carry out the objects of its incorporation.

§ 2. So much of the act to which this is an amendment as conflicts with this act is hereby repealed.

This act shall take effect from and after its passage.

34 EXHIBIT B.

An Ordinance Granting Rights to the Hyde Park Gas Company to Construct and Operate Gas Works in Certain Territory (Passed and Approved June 24, 1871).

Be it ordained by the Board of Trustees of the Town of Hyde Park:

SECTION 1. That permission and authority irrevocably be, and the same are hereby granted to the Hyde Park Gas Company of the town of Hyde Park, and State of Illinois to lay their gas mains, pipes, feeders and service pipes in any and all of the streets, alleys, avenues, highways, parks, squares and public grounds throughout said town, north of the center line of Sixty-seventh (67) street, upon the following conditions:

1st. Said company, when they shall open the ground to lay any pipe or for any purpose whatever, shall restore the grounds, streets, pavements and sidewalks to a condition as good as before they opened them, and satisfactory to the superintendent of public works or such other person as the board of trustees may appoint with all convenient dispatch.

2d. This permission shall be exclusive north of the south line of Sixtieth (60) street, for the period of fifteen years from this date: *Provided*, the works of said company of sufficient capacity to supply said exclusive territory with gas, shall be erected and gas furnished within eighteen months from this date, and the works shall be kept in operation and gas supplied and that no more than three dollars and fifty cents per thousand cubic feet shall be charged for gas to consumers.

3d. That no transfer of the privileges hereby granted shall ever be made to any other company or corporation, or to any individuals except as hereinafter provided, and the general office of said gas company shall be forever kept in said territory over which said exclusive jurisdiction is hereby given.

SEC. 2. Whenever within the period of fifteen years from this date, in the opinion of the board of trustees of the town of Hyde Park, it shall appear to be for the benefit and interest of the
35 said town that the works, gas mains, pipes, machinery, fixtures and all other property, real, personal and mixed, belonging to said Hyde Park Gas Company and necessary and convenient for the purpose of manufacturing and supplying the said town and the citizens thereof with gas, should be owned and operated and controlled by the public authorities of said town, the said Hyde Park Gas Company shall surrender ownership, possession and full control to the said board of trustees of said town of Hyde Park for the use and benefit of said town, all of said property, real, personal and mixed, together with all works, machinery, fixtures, gas mains, pipes, feeders and materials used in the manufacture of gas then on hand upon the payment to said Hyde Park Gas Company of the actual cost thereof, adding thereto the sum of ten per cent. per annum interest, from the time of such expenditure until such payment is made,

deducting therefrom such sums as may have been realized by said company as net revenue from said work; such cost, interest and net revenue to be ascertained by three sworn commissioners, one to be appointed by said board of trustees, one by said Hyde Park Gas Company, and a third by a judge of the circuit court of the county of Cook, State of Illinois; *Provided,* that the board of trustees shall have no power to accept of this option and make such purchase except for the sole use of the town, and that the works shall be exclusively owned and operated by said town.

SEC. 3. The privileges, grants and franchises contained herein are hereby declared null and void unless the said Hyde Park Gas Company shall, before the expiration of thirty days from this date, file with the clerk of this board their written acceptance and assent to the conditions set forth in this ordinance.

Ordinance Passed and Approved November 25, 1871.

SEC. 6. Be it ordained by the board of trustees of the town of Hyde Park: That section 2 of the ordinance relating to the Hyde Park Gas Company, adopted by this board on the 24th day of June, A. D. 1871, be and the same is hereby repealed.

36 An Ordinance granting Further Rights to the Hyde Park Gas Company (Passed and Approved March 15, 1875).

SEC. 7. Be it ordained by the president and board of trustees of the village of Hyde Park: That permission and authority be, and the same are hereby granted to the Hyde Park Gas Company, of the village of Hyde Park, to lay their gas mains, pipes, feeders and service pipes in any and all of the streets, alleys, avenues, highways, parks, squares and public grounds throughout said village south of the center line of Sixty-seventh street, upon the following conditions, to wit:

1st. Said company, when they shall open the ground to lay any pipe, or for any other purpose whatever, shall restore the grounds, streets, pavements, and sidewalks to a condition as good in all respects as before they opened them, and satisfactory to the superintendent of public works, or such person as the president and board of trustees of said village shall from time to time appoint. Such restoration to be made without unreasonable delay, and all excavations to be made in such manner that the public shall not be unnecessarily inconvenienced thereby.

2d. Said gas company to be responsible for any and all damages which may be occasioned by or result from the exercise of the permission or authority of this ordinance, conferred to or upon said company.

EXHIBIT C.

An Ordinance Granting Rights to the Consumers' Gas, Fuel and Light Company to Construct, Maintain and Operate Gas Works Within the City of Chicago (Passed April 28, 1882).

Be it ordained by the city council of the city of Chicago:

SECTION 1. Subject to the terms and conditions of this ordinance there is hereby granted to the Consumers' Gas, Fuel and Light Company, of Chicago, the right to construct, maintain and op-
37 erate gas works within the City of Chicago, together with the right of way along, upon and under all avenues, streets, alleys and public places in said city, for the purpose of placing, operating, repairing and maintaining one or more lines of gas mains and pipes, and all necessary feeders and service pipes in connection therewith, for lighting and fuel purposes.

SEC. 2. Such company or corporation shall not lay its main pipes in any such avenue, street, alley or public place of said city, unless it shall at the said time lay down all feeders or service pipes necessary to make connection, without any subsequent disturbance of the pavement or surface of such avenue, street or public place, with each and all building lots fronting or abutting thereon, and all service pipes or feeders laid by said company shall be coated with Dr. Angus Smith's composition, or some other equally good material for preserving said service pipes or feeders from decay. Such company or corporation shall not charge any person desiring to make a connection with any service pipe laid, or to be laid by such company or corporation, more than twenty-five cents a foot for such service pipe when laid. Said company shall, when ordered by a majority of the city council, extend its main pipes in any block one-half of which shall be improved by buildings.

SEC. 3. That such company or corporation shall do no permanent injury to any street, sidewalk, alley, avenue or public place, or shade tree, or in any manner unnecessarily disturb or interfere with any water pipe, sewer or gas pipe, telegraph or electric wires, cables or pipes, now or hereafter laid by said city or any authorized company or corporation; and when such company or corporation shall open ground in the same, they shall forthwith restore the street, pavement, sidewalk or ground, or water pipe, sewer or gas pipe, to a condition equally good as before, at the expense of said company, and if said company shall fail or refuse so to do, the same may be done by said city, and the said company shall be liable for the cost thereof; and said company shall not make any excavations in any street, alley, avenue or public place, without first procuring a permit for that purpose from the department of public works of said city. When any excavation shall be made by said company in any street,
38 alley or public place, paved with wooden blocks, the foundation boards or planks shall be removed without being cut, unless such cutting shall be especially permitted by the department of public works of said city. The said company shall not use the pub-

lic fire hydrants of said city, nor any water therefrom, without a license and permit from the department of public works of said city. The said company shall, upon notice from the department of public works of said city, remove or change any gas main, pipe, service pipe or feeder which may be in the way of or interfere with the construction or erection of any viaduct, public building or other public structure within said city.

SEC. 4. Such company or corporation shall not open or encumber more of any street, avenue, alley or public place, at any one time, than may be necessary to enable it to proceed with advantage in the laying of any such main pipe, feeder or service pipe, nor shall said company or corporation permit any such street, avenue, alley or public place to remain open or encumbered for a longer period than shall be necessary to execute the work for which the same shall have been opened or without putting up the necessary barriers and lights, so as to effectually prevent the happening of any accident in consequence of such opening or encumbering of such street, alley, avenue or public grounds.

SEC. 5. Such company or corporation shall be liable to and shall compensate the City of Chicago and pay any private individual, owner or owners, or parties interested in any property adjacent to any street, avenue, alley or public place, opened or injured by them, for all damages which may result from leaks or pipe, or by reason of such company or corporation having negligently opened, encumbered, protected or guarded any such street, avenue, alley or public place in said city.

SEC. 6. Such company or corporation shall be subject to all general ordinances of the City of Chicago in regard to gas companies. And the City of Chicago shall have the right, at any time, to provide for the appointment of one or more inspectors of gas with all the power and authority incident to such position, and which the said city may deem necessary to protect the City of Chicago
39 in its corporate rights and individual consumers of gas, against oppression or fraud; and, if the said city shall deem it necessary, to require any inspector (or other city official) to certify to the correctness of all gas bills of consumers of gas furnished by such company or corporation. All meters used by said company for measuring gas shall be subject to inspection and approval by such person or persons, officer or officers, as may be appointed by said city for that purpose, and said company shall pay all reasonable costs and charges of such inspection, the same to be fixed by the city council of said city.

SEC. 7. Such company or corporation shall supply gas light under uniform and sufficient pressure between sunset and sunrise of each day, and the quality of the same shall be as nearly uniform as practicable, averaging for any one month not less than sixteen sperm candles burning 120 grains per hour, to be determined by authorized photometrical tests, a five-foot burner being used.

SEC. 8. The rights and privileges hereby granted are upon the express condition that no gas flowing through any main pipe, feeder or service pipe, laid by said company or corporation or by its author-

ity, shall be charged for, to general consumers thereof, at a rate exceeding one dollar and seventy-five cents per thousand feet cubic: Provided, that to all consumers using at the rate of 100,000 cubic feet and over, per annum, a rebate of at least twenty-five cents per 1,000 feet shall be allowed, and to attempt to collect at a greater rate than that herein specified for gas consumed from any such main pipe, feeder or service pipe, shall work a forfeiture of the rights and privileges hereby granted. The rights and privileges granted are upon the further express condition that such company or corporation shall not extend its pipes beyond the limits of the city, or allow any connection to be made with its pipes, so that gas shall be furnished through its pipes to any consumer outside the City of Chicago.

SEC. 9. In the event that such company or corporation, within three years from the date of the passage of this ordinance giving it permission to lay its main pipes, etc., shall not have built and completed gas works in said city sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days, and located within the limits of the City of Chicago, and shall not have commenced such work and expended thereon at least five hundred thousand dollars within eight months from the date of the passage of this ordinance, or if such company or corporation shall at any time enter into any combination, directly or indirectly, with any gas company or companies, concerning the rates (or price) to be charged for gas, either to the city or private consumers, or if such company or corporations shall directly or indirectly sell, lease or transfer its franchises and privileges to any other gas company or corporation, or if such company or corporation, having commenced to manufacture gas, shall cease for a period of more than ten consecutive days (unless by reason of unavoidable accident) to furnish gas through their pipes, the rights and privileges hereby granted shall cease and be of no more force or effect; or shall fail or refuse to extend its main pipes, as required by section 2 of this ordinance, and it shall not require the judgment or decree of any court of law or equity to determine the said rights and privileges, but the same shall wholly cease and determine, absolutely and at once, upon the happening of any of the matters or things in this section specified.

SEC. 10. This ordinance shall not be in force as to said company or corporation until it shall have been accepted by such company or corporation, such acceptance to be made by the vote of such company or corporation, duly passed or recorded nor until such company or corporation shall have given and filed in the city clerk's office a good and sufficient bond, with two or more good and sufficient sureties, in the penal sum of $500,000, conditioned that such company or corporation shall and will, within three years from the date of the passage of this ordinance, build and complete gas works in said city, sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days, and located within the limits of the City of Chicago, and that the rate to be charged to the consumers of gas which may flow

through the pipe laid by such company or corporation, or by
41 its authority, shall never exceed the rate named and specified in section 8 of this ordinance, and that such company or corporation will not sell, lease or transfer its franchises and privileges to any other gas company, and shall and will not enter any combination with any other gas company concerning the rate (or price) to be charged for gas, and to pay all damages which the City of Chicago, or any consumer of the gas furnished by such company or corporation, shall suffer by reason of the failure of such company or corporation to perform any of the obligations or conditions of this ordinance, such bond and sureties to be approved by the mayor and city comptroller.

SEC. 11. The liability of said company to said city, or to persons who may be injured by the exercise by said company of any rights and privileges hereby granted, shall not be limited by the penalty of said bond, nor shall the remedy against said company be confined to the said bond, it being understood that such remedy is merely cumulative, and that said City of Chicago and any person or persons, shall have the same remedies against said company as it or they would or might have if no such bond were given. In case the duties of the department of public works shall be devolved by said city on any other department or officer, the permits and licenses herein mentioned shall be applied for to such department officer.

EXHIBIT D.

An Ordinance Granting Rights to the Equitable Gas Light and Fuel Company to Construct, Maintain and Operate Gas Works (Passed August 10, 1885).

Be it ordained by the city council of the city of Chicago:

SEC. 1. Subject to the terms and conditions of this ordinance, there is hereby granted to the Equitable Gas Light and Fuel Company, of Chicago, its successors and assigns, the right to construct, maintain and operate gas works within the city of Chicago, together with the right of way along, upon and under all the avenues,
42 streets, alleys and public places in said city, for the purpose of placing, operating, repairing and maintaining one or more lines of gas mains and pipes and all necessary feeders and service pipes in connection therewith for lighting and fuel purposes.

SEC. 2. Such company or corporation shall not lay its main pipes in any such avenue, street, alley or public place of said city, unless it shall at the time lay down all feeders or service pipes necessary to make connections without any subsequent disturbance of the pavement or surface of such avenue, street or public place with each and all building lots fronting or abutting thereon, and all service pipes or feeders laid by said company shall be coated with Dr. Angus Smith's composition, or some other equally good material, for preserving said service pipes or feeders from decay. Such company or corporation shall not charge any person desiring to make a

connnection with any service pipe, laid or to be laid by such company or corporation, more than twenty-five cents a foot for such service pipe when laid. Said company shall, when so ordered by a two thirds vote of all the aldermen elected, extend their main pipes in any block three-quarters of which shall be improved by buildings.

SEC. 3. Such company or corporation shall do no permanent injury to any street, sidewalk, alley, avenue or public place, or shade tree, or in any manner unnecessarily disturb or interfere with any water pipe, sewer or gas pipe now or hereafter laid by said city or any authorized company or corporation, and when such company shall open ground in the same it shall forthwith restore the street pavement, sidewalk or ground, or water pipe, sewer or gas pipe, to a condition equally as good as before, at the expense of said company, and if said company shall fail or refuse to so do, the same may be done by said city, and the said company shall be liable for the cost thereof; and said company shall not make any excavation in any street, alley, avenue or public place without first procuring a permit for that purpose from the department of public works of said city. When any excavations shall be made by said company in any street, alley or public place paved with wooden blocks, the foundation boards or planks shall be removed
43 without being cut unless such cutting shall be specially permitted by the department of public works of said city. The said company shall not use the public fire hydrants of said city nor any water therefrom, without a license or permit from the department of public works of said city. The said company shall, upon notice from the department of public works of said city, remove or change any gas-main, pipe, service pipe, or feeder, which may be in the way of, or interfere with, the construction or erection of any viaduct, public building or other public structure within said city.

SEC. 4. Said company or corporation shall not open or incumber more of any street, avenue, alley or public place, at any one time, than may be necessary to enable it to proceed with advantage in the laying of any such main pipes, feeders or service pipe, nor shall said company permit any such street, avenue, alley or public place to remain open or incumbered for a longer period than shall be necessary to execute the work for which the same shall have been open, or without putting up the necessary barriers and lights, so as to effectually prevent the happening of any accident, in consequence of such opening or encumbering of such street, alley, avenue or public grounds.

SEC. 5. Such company or corporation shall be liable to, and shall compensate the City of Chicago, and pay any private individual, owner or owners, or parties interested in any property adjacent to any street, avenue, alley or public place opened or injured by it, for all damages which may result from leaks of pipe, or by reason of such company having neglectfully opened, incumbered, protected or guarded any such street, avenue, alley or public place in said city.

SEC. 6. Such company or corporation shall be subject to all

general ordinances of the City of Chicago in regard to gas companies. And the City of Chicago shall have the right, at any time, to provide for the appointment of one or more inspectors of gas, with all the power and authority incident to such position, and which the said city may deem necessary to protect the City of Chicago, in its corporate rights, and individual consumers of gas against
44 oppression or fraud; and, if the said city shall deem it necessary to require any inspector (or other city official) to certify to the correctness of all gas bills of consumers of gas furnished by such company. All meters used by said company for measuring gas shall be subject to inspection and approval by such person or persons, officer or officers, as may be appointed by said city for that purpose, and said company shall pay all reasonable costs and charges of such inspection, the same to be fixed by the city council of said city.

SEC. 7. Such company or corporation shall supply gaslight under uniform and sufficient pressure between sunset and sunrise of each day, and the quality of the same shall be as nearly uniform as practicable, averaging for any one month not less than sixteen sperm candles, burning 120 grains per hour, to be determined by authorized photometrical tests, a five foot burner being used.

SEC. 8. The rights and privileges hereby granted are upon the express condition that no gas flowing through any main pipe, feeder or service pipe, made by said company or by its authority, shall be charged for, to general consumers thereof, at the rate exceeding $1.75 per thousand cubic feet; *Provided*, to all customers using 100,000 cubic feet or over per annum, a rebate of at least 25 cents per thousand feet shall be allowed, and to attempt to collect at a greater rate than that herein specified for gas consumed from any such main pipe, feeder or service pipe, shall work a forfeiture of the rights and privileges hereby granted.

SEC. 9. In the event that such company or corporation within three years from the date of the passage of this ordinance, giving it permission to lay its main pipes, etc., shall not have built and completed gas works in said city sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days and located within the limits of the City of Chicago, and shall not have commenced such works and expended thereon at least $100,000 within twelve months from the date of the passage of this ordinance, or if such company shall at any time enter into any combination, directly or indirectly, with any gas company or companies, concerning the rates
45 (or price) to be charged for gas either to the city or private consumers, or if such company shall directly or indirectly sell, lease or transfer its rights and privileges hereunder to any gas company or corporation now engaged in the manufacture and sale of gas within the City of Chicago, or commence to manufacture gas, shall cease for a period of more than ten consecutive days (unless by reason of unavoidable accident), to furnish gas through its pipes, the rights and privileges hereby granted shall cease and be of no more force or effect or shall fail or refuse to extend their main

pipe as required by section 2 of this ordinance; and it shall not require the judgment or decree of any court of law or equity to determine the said rights and privileges, but the same shall wholly cease and determine, absolutely and at once upon the happening of any of the matters or things in this section specified.

SEC. 10. This ordinance shall not be in force as to said company or corporation until it shall have been accepted by such company or corporation, such acceptance to be made by vote of such company or corporation and notice thereof in writing filed with the city clerk, nor until such company shall have given and filed in the city clerk's office a good and sufficient bond, with two or more good and sufficient sureties, in the penal sum of $100,000, conditioned that such company shall and will, within three years from the date of the passage of this ordinance, build and complete gas works in said city sufficiently extensive to enable it to manufacture and distribute gas to an amount of not less than 10,000,000 feet in every thirty days, and located within the limits of the City of Chicago, and that the rate to be charged to the consumers of gas which may flow through the pipes laid by such company, or by its authority shall never exceed the rate named and specified in section 8 of this ordinance, and that such company will not sell, lease or transfer its franchises and privileges to any gas company now engaged in the manufacture and sale of gas within the City of Chicago, and shall and will not enter any combination with any other gas company concerning the rate (or price) to be charged for gas, and to pay all damages which the City of Chicago, or any consumer of the gas furnished by such company, shall suffer by reason of the failure of such company to perform any of the obligations or conditions of this ordinance; such bond and sureties to be approved by the mayor and city comptroller.

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SEC. 11. The liability of such company or corporation to said city or to any person who may be injured by the exercise by said company or any of the rights and privileges hereby granted, shall not be limited by the penalty of said bond, nor shall the remedy against said company be confined to the said bond, it being understood that such remedy is merely cumulative and that said City of Chicago, and any person or persons, shall have the same remedies against said company as it or they would or might have if no such bond were given. In case the duties of the department of public works shall be devolved by said city on any other department or officer the permits and license herein mentioned shall be applied for to such department or officer.

This ordinance shall take effect and be in force from and after its passage.

EXHIBIT E.

An Ordinance Granting Rights to the North Western Gas Works Company in Certain Territory (Passed July 5, 1881).

Be it ordained and enacted by the board of trustees of the town of Lake, and it is hereby enacted by authority of the same:

SEC. 1. That exclusive and irrevocable privilege and authority is hereby granted to the said North Western Gas Works Company, a corporation, existing by virtue of the laws of New York its assigns and representatives, to furnish illuminating gas for the period of twenty five years, and to open such streets, alleys, highways and public grounds in the said town of Lake as may be necessary to enable said gas works company to lay down, operate, main-
47 tain and extend its street mains and service pipes. The privileges and authority hereby granted are upon the following express conditions:

First. That the said gas works company, its successors and assigns, shall and will forever indemnify and save harmless the said town of Lake against all and from any and all damages, judgments, decrees, costs and expenses of the same which it may suffer, or which may be recovered or obtained against said town of Lake, for or by reason of the granting of such privileges and authority, or for or by reason of, or growing out of, or resulting from the passage of this ordinance, or any other matter or thing connected therewith, or with the exercise by said company its grantees or assigns under, or by virtue of the provisions of this ordinance.

Second. That the said gas company, its successors and assigns, shall place all such streets avenues, highways and public grounds in as good condition as they were before said work was begun.

Third. That the main supply pipes of said gas company shall be laid on a line parallel to and ten (10) feet west of the center line of all streets running north and south, and on a line parallel to and ten (10) feet south of the center line of all streets running east and west, unless otherwise ordered by the board of trustees and in such a manner as not to interfere with any improvements said board may deem proper to make upon such streets, alleys, avenues, highways and public grounds, or have made heretofore.

SEC. 2. That for and in consideration of the foregoing exclusive privilege and authority, it shall be obligatory upon such gas works company, its successors, representatives and assigns to construct in said town of Lake suitable buildings, erections and fixtures for the manufacture of gas for consumption and use in said town, at such places in said town as said company may decide, *Provided*, such place is acceptable to said board of trustees, and to lay mains along such streets, alleys, avenues, highways and public grounds as the exigencies of business and private demands of the inhabitants of said town may require, and where the consumption of gas will justify the laying of mains and service pipes; and to furnish and

supply gas to such public lamps along the line of such main
48 pipes as may be laid, as specially provided by this ordinance, and shall also be ordered from time to time by the board of trustees of said town; such public lamps to have burners which will furnish an equivalent in illuminating value to that produced by a burner consuming four (4) cubic feet of good coal gas per hour, including the lighting, extinguishing, cleansing and repairing of said street and public lamps, the price therefor to be paid by said town, thirty-two 50/100 dollars per lamp per annum, and when the number of lamps shall reach two hundred and fifty, then at the price of thirty dollars per lamp per annum, and when the number of lamps shall reach five hundred or upward, then at the price of twenty-seven 50/100 dollars per lamp per annum for the first ten years of the life of this ordinance, and for the balance of the term or life of this ordinance at such a price as may be mutually agreed upon, not to be less than twenty ($20) dollars per lamp per annum, to be paid monthly in all cases except as to the first year hereof, and for gas consumed and services in connection with said lamps for such first year payment shall be made by a warrant upon the treasurer of said town, to be paid out of a fund collected by special assessments or property deemed benefited, to be levied during the year 1881, and if the same cannot, for any reason, be so paid, then out of the general fund of said town.

SEC. 3. That said lamps are to be lighted and extinguished in accordance with what is known as the Philadelphia scale or standard of time.

SEC. 4. That the style of the first one hundred twenty-five (125) lamps to be used shall be what is known as the Stewart improvement, and the style of the lamp post to be used shall be like that now used in the City of Chicago.

SEC. 5. That said town of Lake shall pay for putting in all pipes, posts and fixtures for its own use and benefit from the main pipes, where the connection is made; said pipe and fixtures to be put in under the supervision of said company or their representatives.

SEC. 6. That said company shall furnish gas to citizens, residents and manufacturers of said town, for their private consumption, at a price not to exceed two (2) dollars and fifty (50) cents for the
49 equivalent in illuminating power or value of one thousand (1,000) cubic feet of good coal gas of fourteen (14) candle-power, said citizens, residents or manufacturers to pay for putting in the necessary pipes and fixtures to connect the point of consumption with the main pipes—such connection to be put in under the supervision of said gas works company or their representatives.

SEC. 7. That the said town of Lake further agrees that the right to light its streets, highways, public grounds or buildings shall not be granted to any other corporation, corporations, person or persons whatsoever during the term of this ordinance, and to purchase from said company, or its representatives, so much gas as may be required to properly illuminate such principal streets and public grounds of said town during the term of this ordinance as its board of trustees

may from time to time order to be supplied with gas and lighted as aforesaid.

SEC. 8. Said gas works company to commence work within thirty (30) days from the acceptance of this ordinance, and carry the same steadily forward until the mains are laid in the following named streets, to wit: Halsted street, from Thirty-ninth street to Forty-third street; in Forty-third street, from Halsted street to Wentworth avenue; in Wentworth avenue, from Thirty-ninth street to Sixty-seventh street; in Forty seventh street, from Wentworth avenue to State street; in Fifty-first street, from School street to the tracks of the Chicago, Rock Island and Pacific Railroad Company; in Thirty-ninth street, from Wentworth avenue to State street, and in State street, from Thirty-ninth to Fortieth street. The laying of said pipes in said streets to be completed during the year eighteen hundred and eighty-one (1881), unavoidable delays excepted, and in case such delays occur, to be completed as soon thereafter as practicable, due diligence to be exercised in the prosecution of the work by said gas works company.

SEC. 9. That at least one hundred and twenty-five public lamps shall be erected on the line of said main pipes as soon as said gas works company are prepared to furnish gas for the same. That said gas works company, by acceptance of this ordinance, agree to furnish said one hundred and twenty-five (125) lamp-posts, lanterns of the style above mentioned in the ordinance, together with lamp-posts, cocks and burners of the style and pattern generally used in the principal cities of the country, at sixteen (16) dollars and forty (40) cents each; and for service pipes, excavations and labor necessary to put the same in order for lighting, three (3) dollars and sixty (60) cents each additional for each lamp-post.

SEC. 10. That the one hundred and twenty-five (125) lamps, lamp-posts, burners and cocks above mentioned shall be paid for by warrant drawn on the treasurer of said town, to be paid out of a fund, when collected, to be collected by special assessment on the property deemed benefited by the erection of said lamps and lamp-posts, to be levied during the year eighteen hundred and eighty-one (1881).

SEC. 11. That in case the board of trustees shall deem it necessary to light the streets in isolated localities, where the consumption of gas will not warrant the laying of pipes, said company shall light the same with oil or gasoline lamps, at a price to be mutually agreed upon by said board of trustees and said company, at a price as low as any responsible parties will agree to light the same.

SEC. 12. This ordinance shall take effect and be in force from and after its passage and acceptance, and to be void unless the said gas works company shall file its written acceptance of the same with the town clerk of said town of Lake within twenty (20) days after its passage.

EXHIBIT F.

An Ordinance Granting Rights to the Suburban Gas Company in the Town of Lake View (Passed and Approved October 29, 1884; Accepted November 17, 1884).

Be it ordained by the board of trustees of the town of Lake View:

SECTION 1. That permission and authority be and the same are hereby granted to the Suburban Gas Company to supply and
51 sell gas made from coal or other substances, to be used for heating and illuminating purposes, within the town of Lake View, and to lay and maintain gas mains and service pipes for distributing said gas in any of the public streets, alleys, avenues, highways or grounds within the limits of said town.

SEC. 2. That before said company shall open any street, alley, highway or other public place for the purpose of introducing its main or service pipes, it shall cause notice of its intention so to do, to be given to the corporate authorities of said town, specifying in such notice the streets or parts of street, alley or other public place in which it is proposed to introduce such pipes.

SEC 3. In all cases where said company shall open any street, alley or other public place within said town, for the purpose of laying its pipes therein it shall restore the same to its former condition as nearly as practicable with as little delay as possible; and no more of any street, alley or other public place shall be disturbed or incumbered in the laying of said pipe, nor shall the same remain open or incumbered for a longer time than shall be necessary to enable said company to complete its work as above provided. And said company shall be liable for any and all damages resulting from its negligent conduct in the prosecution of said work, and from its failure or neglect to properly guard and protect the excavations made by it in the progress thereof.

SEC. 4. That whenever said company shall desire to open any improved street it shall first procure a permit from said town so to do, and when any such improved street shall have been opened, said company shall restore the improvement to as good a condition as the same was before such opening, and upon its neglect or refusal to restore the same in such condition, then said town may properly restore the same and said company shall be liable to the town for any costs incurred thereby.

SEC. 5. That whenever said town shall by ordinance order the permanent improvement of any street, it may by further order direct said company to lay in such street its necessary pipes and house connections to all buildings along the line of such improvements.

SEC. 6. The said company shall furnish gas for consump-
52 tion within said town of an illuminating power of not less than sixteen (16) candles, and to the corporate authorities of said town, for the lighting of the street-, public buildings and public places within said town at a price not exceeding one dollar and fifty cents ($1.50) per thousand cubic feet to be measured by automatic regulator burners attached to the lamps, or otherwise as may be agreed

between said company and the corporate authorities of said town; and the price of gas to private consumers within said town shall not exceed two dollars ($2.00) per thousand cubic feet with a discount therefrom of fifty cents (50c.) per thousand cubic feet in case the bills therefor for each month shall be paid within the first ten (10) days of the next succeeding month. And that the town of Lake View shall cause street lamps to be erected a suitable distance along the public street in which the gas mains of said company shall be laid, to be connected with said mains, and shall immediately and for the period of five years thereafter at all proper hours of the night, take and consume the gas of the said company for the lighting of said streets, and pay for the gas so consumed at and after the price and rate aforesaid. Settlements and payments to be made quarter yearly. The schedule for the time for lighting and extinguishing said street lamps, and the size of burners thereon, to be the same in use in the north division of the City of Chicago.

SEC. 7. That said company shall within six (6) months of the date of the passage of this ordinance lay in the street- or alleys of said town of Lake View, at least three (3) miles of street mains with proper service pipes connected therewith, for the supplying of gas to actual consumers, and shall within two years extend its mains to Ravenswood, and shall thereafter extend said mains and service pipes as rapidly as the increase demand for gas shall justify such extension.

SEC. 8. Unless the said 'Suburban Gas Company' shall within ten (10) days from and after the passage of this ordinance accept the same and the terms and provision- thereof, and notify the board of trustees of the town of Lake View of such acceptance, all the rights and privileges hereby granted to said company, shall be absolutely forfeited.

53 EXHIBIT G.

An Ordinance Granting Authority to the Chicago Economic Fuel Gas Company to Construct and Operate Works for the Manufacture of Fuel Gas in the City of Chicago (Passed December 22, 1890; Accepted January 19, 1891).

Be it ordained by the city council of the city of Chicago:

SECTION 1. Subject to the terms and conditions of this ordinance, there is hereby granted to the Chicago Economic Fuel Gas Company, its successors and assigns, the right to construct and operate works for the manufacture of fuel gas, only, within the City of Chicago, also with the right of way along, upon and under all the avenues, streets, alleys and public places in said city for the purpose of placing, operating, repairing and maintaining a line or lines of gas mains and pipes and all necessary feeders and service pipes in connection therewith, for the distribution of natural and manufactured fuel gas exclusively. Said gases shall, at all times, be of the best quality and highest efficiency respectively for the purposes. *Provided, however,* that the successors and assigns referred to in this section, or elsewhere in this ordinance, shall not be construed to include any other gas

company, trust or corporation, as provided in section twelve (12) of this ordinance.

SEC. 2. Such company or corporation shall not lay its main pipes in any such avenue, street, alley or public place of said city, unless it shall at the time lay down all feeders or service pipes necessary to make connection without any subsequent disturbance of the pavement or surface of such avenue, street or public place with each and all building lots fronting or abutting thereon, and all service pipes or feeders laid by said company shall be coated with Dr. Angus Smith's composition, *or* some other equally good material for preserving said service pipes or feeders from decay. *Provided*, that the main or distributing pipes shall be laid on such portion of the public highway as the commissioner of public works may direct, and
54 at all intersecting streets which are improved the main or distributing pipes shall be laid at right angles thereto and extend at least to the building line, and all feeders or service pipes shall be laid to the curb line of the street. Said company or corporation shall not charge any person desiring to make connection with any service pipe laid or to be laid by such company or corporation more than 25 cents a lineal foot for such service pipe when laid. Said company shall, when so ordered by a majority vote of all the aldermen elected, extend their mains and supply pipes on any street, avenue or other public highway contiguous to the pipes of said company at the time in use or operation. *Provided*, such extension shall cover territory one-half of which is improved by buildings.

SEC. 3. That said company or corporation shall do no permanent injury to any street, sidewalk, alleys, avenue or public place, or shade tree or in any manner unnecessarily disturb or interfere with any water pipe, sewer, gas pipe, conduit or other underground work now or hereafter laid by said city, or any authorized company or corporation, and when such company shall open ground in any street it shall forthwith restore the street, pavement, sidewalk or ground or water pipe, sewer, gas pipe, conduit or other underground work, to a condition equally as good as before, at the expense of said company, and, if said company shall fail or refuse so to do, the same may be done by said city and the said company shall be liable for and pay the cost thereof. Said company shall not make any excavation in any street, avenue, alley or public place without first procuring a permit for that purpose from the commissioner of public works of said city. When any excavation shall be made by said company in any street, alley or public place paved with wooden blocks, the foundation boards or planks shall be removed without being cut, unless said cutting shall be specially permitted by the commissioner of public works of such city. The said company shall not use the public fire-hydrants of said city or any water therefrom, without paying for same, under a license and permit from the commissioner of public works of said city. The said company shall, upon notice from the commissioner of public works of said city remove or change
55 any gas main pipe, service pipe or feeder which may be in the way or interfere with the construction or erection of any viaducts, public building or other public structure, and whenever said

city shall construct or form into a general subway any street, avenue, alley or other public highway, on or through which any pipe or pipes authorized by this ordinance may be located, said company, upon due notice from proper city authorities, shall occupy said subway and place and maintain its pipes and appurtenances therein at its own cost and expense.

SEC. 4. Such company or corporation shall not open or encumber more of any street, avenue, alley or public place at any one time than may be necessary to enable it to proceed with advantage in the laying of such main pipes, feeder or service pipes, nor shall said company permit any such street, avenue, alley or public place to remain open or encumbered for a longer period than shall be necessary to execute the work for which the same shall have been opened, or without putting up the necessary barriers and lights so as to effectually prevent the happening of any accident in consequence of such opening or encumbering of such street, alley, avenue or public grounds, nor shall any two next parallel streets be excavated at the same time.

SEC. 5. Such company or corporation shall be liable to and shall compensate the City of Chicago, and pay any private individual, owner or owners, or parties interested in any property adjacent to any street, avenue, alley or public place opened or injured by it, for all damages which may result from leaks of pipes, or by reason of such company having neglectfully opened, encumbered, protected or guarded any such street, avenue, alley or public place in said city: *Provided*, said company shall, in the exercise of the rights and privileges hereby granted, be subject to all laws and ordinances relating to nuisances.

SEC. 6. Such company or corporation shall be subject to all general ordinances of the City of Chicago in regard to gas companies, and the City of Chicago shall have the right at any time to provide for the appointment of one or more inspectors of gas, with all the power and authority incident to such position and which the
56 said city may deem necessary to protect the City of Chicago in its corporate rights and individual consumers of gas. All meters used by said company for measuring gas shall be subject to inspection and approval by such person or persons, officer or officers, as may be appointed by said city for that purpose, and said company shall pay all reasonable cost and charges of such inspection as the same may be fixed by the city council of said city, and said company shall pay the reasonable cost of all necessary city inspectors of the work of construction.

SEC. 7. The rights and privileges hereby granted are upon the express condition that no gas flowing through any main pipe, feeder or service pipe laid, controlled or operated by said company or by its authority, shall be charged for at a rate not to exceed sixty (60) cents per one thousand (1,000) cubic feet for natural gas, nor to exceed fifty (50) cents per one thousand (1000) cubic feet for manufactured fuel gas, with a rebate of ten (10) cents per thousand (1,000) cubic feet on said above prices in case of payment before the 12th day of the month next succeeding that in which such gas is furnished, and to attempt to collect a greater rate than that herein

specified shall work a forfeiture of the rights and privileges hereby granted.

SEC. 8. The laying of the pipes herein authorized shall be under the supervision and direction of the commissioner of public works, and where said company shall apply to the commissioner of public works for permission to lay its pipes on any given street in order to reach any specified point on such street, and there shall be an alley parallel with said street and within three hundred feet of the same, the commissioner of public works shall order such pipe or pipes to be laid in such alley instead of such street, and the use of such alley shall be subject to all the conditions provided herein for streets.

SEC. 9. Said company shall pay annually to the City of Chicago, for and in consideration of the rights and privileges hereby granted, an amount equal to five (5) per cent. of the gross revenue or receipts of said company. Such payment shall be made in the manner following: At the expiration of one year from the time when
57 said company shall commence to distribute gas to consumers in the City of Chicago the president or other chief officer of the company shall file with the city comptroller a statement verified under oath, showing the amount of the gross annual revenue or receipts of said company for the preceding year and shall, at the same time, pay to said comptroller the said amount of five (5) per cent. on the annual gross revenue receipts. Said payment to be made, as herein prescribed, annually during the term of this ordinance.

SEC. 10. This ordinance is granted upon the express condition that said company shall, within two years from the date of the acceptance of this ordinance, have laid, and in operation and ready for supplying consumers, at least twelve (12) miles of its main pipes within the limits of the City of Chicago, and unless it shall so have constructed and laid the number of miles of distribution pipes herein referred to, then and under these conditions this ordinance shall be and become void and of no effect: *Provided*, however, that the time during which any legal proceedings shall be pending, whereby the said company, its successors and assigns, shall be prevented from or delayed in complying with the requirements of the section, shall not be taken or deemed any part of the time specified. *Provided, further*, however, that the City of Chicago may intervene in any suit and move for its dismissal, in the name of said company, in case such suit may be deemed by the city as collusive or for the purposes of delay or extension of the time herein specified.

SEC. 11. Said company shall file with the city clerk a good and sufficient bond to be approved by the mayor in the penal sum of one hundred thousand dollars ($100,000), conditioned that such company, its successors or assigns, shall comply with all the terms and conditions of this ordinance and shall indemnify and save harmless the City of Chicago against and from any and all damages, judgments, decrees and costs of whatsoever kind or nature, by reason of the passage of this ordinance and the exercise of any of the rights and privileges hereby or herein granted.

SEC. 12. This ordinance shall take effect and be in force from and after its passage and the filing and approval of the bond herein re-

quired and the acceptance thereof by said company:
58 *Provided,* that if said approved bond and acceptance be not filed within thirty days of the passage hereof, this ordinance shall be void and of no effect; and, *provided,* still further, that if said company shall at any time enter into any combination directly or indirectly, with any gas company or companies, concerning the rates or prices to be charged for gas, or if said company shall, directly or indirectly, sell, lease or transfer its plant, property rights and privileges as herein authorized to any other gas company, trust or corporation now or hereafter engaged in the manufacture and sale—gas within the City of Chicago, or if said company, having commenced to manufacture gas, or furnish natural gas shall cease for a period of more than ten (10) consecutive days, unless by reason of unavoidable accident, or injunction to furnish gas through their pipes, or if said company shall fail or refuse to extend its distribution pipes, as required by this ordinance the rights and privileges hereby granted shall cease and be of no more force and effect.

SEC. 13. The rights and privileges granted by this ordinance shall be granted for the terms of twenty-five (25) years from and after its acceptance, and all rights hereunder shall cease after the expiration of such term. The permission and authority hereby granted are upon the express terms and conditions that at the end of twenty (20) years after the passage of this ordinance the City of Chicago shall have the right to purchase the entire plant of said company and all its property and effects, of every kind and description, within said City of Chicago, at an appraised value which shall be ascertained and determined by three competent appraisers, who shall have free access to all the books, papers and other data bearing upon the subject. Said appraised value shall not include the value of any rights, privileges and franchises granted by the city. One of said appraisers shall be appointed by the mayor of the City of Chicago, one by said company, and one by the two so selected, and if they cannot agree upon the third appraiser, then any one of the chancellors of the circuit court of Cook county may appoint him. The said appraisers shall make report of the value of said property within
59 six (6) months after their appointment to the mayor and city council, and said mayor and city council shall have the option, at the time within six (6) months after receipt of said report, to purchase said plant and property, together with all its appurtenances and equipments, at the appraised value."

An Ordinance Amending an Ordinance Granting to the Chicago Economic Fuel Gas Company the Right to Construct and Operate Works for the Manufacture of Fuel Gas Within the City of Chicago (Passed July 13, 1891).

Be it ordained by the city council of the city of Chicago:

SECTION 1. That the ordinance granted by the city council on the 22nd day of December, 1890, granting unto the Chicago Economic Fuel Gas Company the right to construct and operate works for the manufacture and distribution of fuel gas within the City of Chicago, be, and the same is hereby amended, as follows

SEC. 1. of said ordinance is hereby amended so as — read as follows:

'SECTION 1. Subject to the terms and conditions of said ordinance there is hereby granted to the Chicago Economic Fuel Gas Company, its successors and assigns, the right to construct and operate works for the manufacture of illuminating and fuel gas within the City of Chicago; also, with the right of way along, upon and under all the avenues, streets, alleys and public places in said city, for the purpose of placing, operating, repairing and maintaining a line or lines of gas mains and pipes, and all necessary feeders and service pipes in connection therewith, for the distribution of illuminating gas and natural and manufactured fuel gas. Said gases shall at all times be of the best quality and highest efficiency for the purposes: *Provided, however,* that the successors and assigns referred to in this section, or elsewhere in this ordinance, shall not be construed to include any other gas company, trust or corporation, as provided in section 12 of this ordinance.'

Also, by amending section 7 of said ordinance of December 22, 1890, so that said section shall read as follows:

60 'SEC. 7. The rights and privileges hereby granted are upon the express condition that the price to be charged for the several kinds of gas shall not be in excess of the following rates: For illuminating gas the charge shall not exceed one dollar and ten cents ($1.10) per one thousand (1,000) cubic feet; for natural gas the charge shall not exceed sixty cents (60) per one thousand (1,000) cubic feet, and for manufactured fuel gas the charge shall not exceed fifty cents (50) per one thousand (1,000) cubic feet, with a rebate of ten cents (10) per one thousand (1,000) cubic feet on said above prices for illuminating, natural and fuel gas, in case of payment before the twelfth day of the month next succeeding that in which said gas is furnished; and to attempt to collect a greater rate than that herein specified shall work a forfeiture of the rights and privileges hereby granted. Said company shall commence work within six months from the passage thereof or this ordinance shall be null and void.'

Also by amending section 9 of said ordinance, so that said section 9 shall read as follows:

'SEC. 9. Said company shall pay annually to the city of Chicago, for and in consideration of the rights and privileges hereby granted, an amount equal to three (3) per cent. of the gross revenue or receipts of said company from the sale of illuminating gas, and five (5) per cent. on the gross revenue or receipts of the said company from the sale of the natural gas or manufactured fuel gas. Such payments shall be made in the manner following: At the expiration of one year from the time when said company shall commence to distribute either illuminating gas or fuel gas to consumers in the city of Chicago, the president or other chief officer of the company shall file with the city comptroller a statement, under oath, showing the amount of the gross annual revenue or receipts of said company for the preceding year and shall, at the same time, pay to said comptroller the said amount of 3 per cent. on the annual gross revenue or

receipts from the sale of illuminating gas, and 5 per cent. on the annual gross revenue or receipts from the sale of natural or fuel gas. Said respective payments to be made as herein prescribed, annually during the terms of this ordinance. And in addition to said payments, said company shall, by the said city of Chi-
61 cago, furnish to said city illuminating gas at the rate of not to exceed seventeen dollars and fifty cents ($17.50) per lamp per annum during the term of this ordinance.'

Also, by striking out the word 'two,' occurring in the third line of section 10 of said ordinance, and inserting in lieu thereof, the word 'three.'

SEC. 2. This ordinance shall take effect and be in force from and after its passage.

An Ordinance Amending an Ordinance Granting Authority to the Chicago Economic Fuel Gas Company to Construct and Operate Works for the Manufacture of Gas (Passed December 29, 1890; Accepted January 19, 1891).

Be it ordained by the city council of the city of Chicago:

SEC. 1. That the ordinance passed by the city council of the city of Chicago, on the 22d day of December, 1890, granting unto the Chicago Economic Fuel Gas Company the right to construct and operate works for the manufacture and distribution of fuel gas, within the limits of said city, be and the same is hereby amended, as follows: by striking out the last paragraph in section 2, which reads as follows: "Said company shall, when so ordered by a majority vote of all the aldermen elected, extend their mains and supply pipes on any street, avenue or other public highway contiguous to the pipes of said company at the time in use or operation. *Provided*, such extension shall cover territory one-half of which is improved by buildings."

Also, by adding to section 3, the following:

"And it shall be the duty of said commissioner of public works to issue all permits asked for under this ordinance, without any delay and in accordance with the terms thereof."

Also, by striking out all after the first paragraph in section 13, so that said section 13 shall read as follows:

"SEC. 13. The rights and privileges granted by this ordinance shall be granted for the term of twenty-five (25) years from and after its acceptance, and all rights hereunder shall cease after the expiration of such time."

SEC. 2. This ordinance shall take effect and be in force from and after its passage.

62 EXHIBIT H.

An Ordinance Granting Rights to Hank & McClary to Construct, Operate and Maintain Gas Works and to Pipe Oil in Certain Territory (Passed, Approved, Accepted, and Filed March 21, 1889).

Be it ordained by the president and board of trustees of the village of Hyde Park:

SECTION 1. That permission and authority be, and are hereby granted to Charles D. Hank and Nelson A. McClary subject to the provisions hereinafter contained to construct, maintain and operate a system of works within the village of Hyde Park to enable said Hank and McClary, or their assigns, to receive, produce and furnish for sale, natural and other gas and petroleum oil, or either of them; and to enable said Hank and McClary and their assigns to deliver such gas and oil to their customers, the right of way is hereby granted to them, along, upon and under all avenues, streets, alleys and public places, rivers and canals in said village, for the purpose of laying, operating, maintaining and repairing pipes, tubes, feeders and service pipes in connection with the said business of said Hank and McClary and their assigns: *Provided*, that this ordinance shall not grant authority to pipe oil north of 67th street in said village.

SEC. 2. Said Hank and McClary, or their assigns, shall do no permanent injury to any street, sidewalk, alley, avenue or public place, or in any manner unnecessarily disturb or interfere with any water pipes, sewer or gas pipe, telegraph or electric wires, cables or pipes now laid, or hereafter to be laid by, or by authority of said village; that in laying their said pipes no greater distance than one-quarter of a mile shall be opened at any one time, and the work shall be done continuously and speedily prosecuted to completion under the direction of the superintendent of public works, or other proper officer of said village; that any streets, lanes, roads or alleys open for the purpose aforesaid shall be immediately restored to a condition equally as good as before opened by or for the benefit of said Hank and McClary and their assigns, by the superintendent of public works or other proper officer of said village, and the said
63 superintendent of public works or other proper officer of said village shall make an estimate of the cost of restoring each section not exceeding one quarter of a mile, as aforesaid, to a condition equally as good as before; and payment of the amount of the said estimates shall be made by said Hank and McClary, or their assigns, to the comptroller of the said village before such street, lane, road or alley shall be opened and in no case shall the village be held liable for any loss or damage that may occur in the restoring of such street, lane, road or alley as aforesaid; *Provided, however,* that if the said Hank and McClary and their assigns shall restore each section, as aforesaid, of said street, lane, or alley to a condition satisfactory to the superintendent of public works, or other proper officer of said village within fifteen (15) days after the same shall have been

opened by or for said Hank and McClary, or their assigns, then the amount of deposit as aforesaid shall be returned to said Hank and McClary, or their assigns, upon the order of the said superintendent of public works or other proper officer.

SEC. 3. Said Hank and McClary, or their assigns, shall put up all necessary barriers, lights, and signals to prevent the happening of any accident in consequence of any opening or incumbrance of any street, alley, lane, avenue or other public ground in said village.

SEC. 4. Said Hank and McClary, or their assigns, shall be liable to, and by the acceptance of this ordinance, agree to pay and compensate the village of Hyde Park, or any private individual, owner or parties interested in any property adjacent to any street, avenue, alley or public ground opened or injured by them, for all damages such party may suffer caused by or resulting from negligence or want of proper care or skill in the construction of their works or lines of pipes, or in opening, incumbering, refilling or guarding any opening or construction of any street, alley, or public place in said village or growing out of the escape of any oil or gas contained in or conducted through such pipes or tubes of said company.

SEC. 5. Said Hank and McClary, or their assigns, shall be
64 subjected to all general ordinances of the village of Hyde Park in regard to gas company or companies of a similar character or business or relating to the supply of petroleum oil, now in force or which may be hereafter passed.

SEC. 6. The village of Hyde Park, for itself and citizens reserves the right to put in sewerage, water and other pipes, and any and all improvements which it may deem necessary or proper, at any and all times, in its streets, alleys or public grounds, without any liability to said Hank and McClary or their assigns, for so doing, and on reasonable notice said Hank and McClary, or their assigns, shall take proper care of their own pipes and property in such streets, alleys or public grounds.

SEC. 7. Whenever the board of trustees or their successors shall provide for the improvement of any street by paving or macadamizing the same, the said Hank and McClary, or their assigns, shall, within sixty (60) days after receiving notice from the department of public works or other proper authority, cause pipes suitable for the supply of gas upon said street to be laid therein, including such main or service pipes, feeders, and house connections to the curb lines of said street and connecting with the building lots thereon, as may be necessary or proper. *Provided, however*, that said Hank and McClary, or their assigns, shall not be required to lay pipe in any such street unless ordered so to do by the board of trustees, unless the pipe so laid shall connect with the general system of said Hank and McClary, or their assigns; and *provided, further*, that in case of the failure of said Hank and McClary, or their assigns, after such notice to lay such pipe and connections prior to such improvements, said Hank and McClary and their assigns shall not thereafter have the right to tear up said street nor any part thereof, except upon permission of the board of trustees or their successors, first specially had and obtained.

SEC. 8. Said Hank and McClary or their assigns, shall, unless prevented by due process of law, commence the erection of gas works within six months from the date of passage of this ordinance, and shall complete said works and furnish gas for fuel, power, light or heat within eighteen (18) months from said date, said
65 works to be commenced and completed in good faith, to be of a permanent character and to have a capacity of not less than two hundred and fifty thousand (250,000) cubic feet of gas per day and to be intended to produce and supply to consumers regularly not less than said 250,000 cubic feet of gas per day. If said Hank and McClary or their assigns, shall fail to so commence said works and complete the same, and furnish gas within said periods of six (6) and eighteen (18) months or having commenced to supply gas, they shall, unless for causes beyond the control of said Hank and McClary, or their assigns, cease to supply gas for fuel, power, light or heat for a period of more than thirty (30) days, then the rights and privileges hereby granted shall cease and be of no more force and effect. *Provided, however,* that if said Hank and McClary, or their assigns, shall be delayed by any ordinance or resolution of the village of Hyde Park, then the period of any and all such delays shall be added to said periods of six (6) and eighteen (18) months.

SEC. 9. The pipes for oil and for high pressure natural gas, that is having a pressure exceeding ten (10) pounds to the square inch shall be of wrought iron of the best material and with joints of the best known character for securing natural gas or oil. Said pipes shall be placed at least three feet below the surface of the ground, and it is hereby made the duty of said Hank and McClary or their assigns, to provide an escape system to carry off superfluous natural gas or oil to relieve undue pressure and prevent explosion.

SEC. 10. Said Hank and McClary shall forfeit and pay to the said village of Hyde Park the sum of twenty thousand ($20,000) dollars, as liquidated damages in case they or their assigns shall fail to commence the erection of gas works within six (6) months from the date of the passage of this ordinance, or in case they shall fail to complete said works and furnish gas within eighteen (18) months from said date, as provided by section 8 hereof; and said Hank and McClary shall, within sixty (60) days from and after the date of the passage of this ordinance, execute and file with the president of the village of Hyde Park, a good and sufficient bond in the penal sum of fifty thousand ($50,000) dollars, to be approved by
66 the board of trustees, conditioned, that said Hank and McClary and their assigns, shall at all times save said village harmless from and on account of all injury to persons or property that may be caused by the acts of the said Hank and McClary, or their assigns, or their employés, or by the escape of their gas or oil, and to make good and pay for all injury and damage to the property of the said village of Hyde Park that may be in anywise caused by the operations of the said Hank and McClary, or their assigns, hereunder, and further conditioned to pay the said village of Hyde Park

said sum of twenty thousand ($20,000) dollars, liquidated damages provided for in this section.

SEC. 11. Said Hank and McClary, or their assigns, shall not charge or collect more than one dollar and twenty-five cents ($1.25) per thousand cubic feet for gas for illuminating purposes, nor more than ninety cents ($.90) per thousand cubic feet for gas for heating purposes, with a rebate of twenty per cent. (20 per cent.) on said above prices in case of payment on or before the twelfth (12th) day of the month next succeeding that in which such gas is used by consumers thereof. When said Hank and McClary, or their assigns, shall furnish illuminating gas, the said Hank and McClary, or their assigns, shall supply gas light under uniform and sufficient pressure between sunset and sunrise of each day, and the equality of the same shall be as nearly uniform as practicable averaging for any one month not less than sixteen (16) sperm candles burning one hundred and twenty (120) grains per hour; to be determined by authorized photometrical tests, a five (5) foot burner being used, and provided the rights and privileges hereby granted are upon the express condition that said Hank and McClary, or their assigns, shall not charge the village of Hyde Park more than ninety cents ($.90) per thousand cubic feet for illuminating gas, and not more than sixty-five ($.65) per thousand cubic feet for heating gas.

SEC. 12. No transfer of the privileges hereby granted shall ever be made except by said Hank and McClary, but no transfer shall be made by their assigns, and should Hank and McClary, or their assigns become a party to any trust or combination respecting the quantity or quality or price of gas or oil *and* such transfer, combination or transaction shall work a forfeiture of the rights and privileges hereby granted.

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SEC. 13. This ordinance shall take effect and be in force when and as soon as said Hank and McClary, or their assigns, shall file with the clerk of the village of Hyde Park their acceptance in writing thereof, together with their bond, as hereinbefore provided, and in case said Hank and McClary, or their assigns, shall not file said acceptance in writing, and said bond within sixty (60) days after the passage and approval of this ordinance, then this ordinance shall be and become void and without force and effect.

EXHIBIT I.

An Ordinance Granting Rights to the Calumet Gas Company (Passed and Approved November 9, 1885).

Be it ordained by the president and board of trustees of the village of Hyde Park:

SECTION 1. That permission and authority be and the same is hereby granted to the Calumet Gas Company, a corporation of the State of Illinois, to lay its gas mains, pipes, feeders and service pipes in any and all the streets, alleys, avenues, highways, parks,

squares and public grounds throughout the village of Hyde Park, south of the center line of Sixty-seventh street, upon the following conditions.

SEC. 2. Said Calumet Gas Company, when it shall open the ground to lay any pipes, or for any purpose whatever, shall without delay restore the grounds, streets, pavements and sidewalks to a condition as good as before they opened them and satisfactory to the superintendent of public works, or such other person as the board of trustees may appoint.

SEC. 3. The works of said Calumet Gas Company, shall be of sufficient capacity to supply said territory, and shall be commenced within six months, and gas furnished within eighteen months from the passage of this ordinance, and no more than two ($2.00)
68 dollars per thousand cubic feet shall be charged to consumers; provided, however, that in case payment shall be made by said consumer on or before the twelfth day next after the month in which the gas shall be consumed, a rebate of twenty-five (25) cents per thousand cubic feet shall be allowed to such consumer.

SEC. 4. The works of said Calumet Gas Company shall be located at a point south of the center line of Eighty-third street.

SEC. 5. The said Calumet Gas Company shall not have any privileges or rights in the territory bounded on the north by Ninety-fifth street, on the east by the center of Stony Island Avenue, and on the south by the south line of Hyde Park, and on the west by the west line of Hyde Park.

SEC. 6. The said Calumet Gas Company, its successors and assigns, shall be subject to all the general ordinances of the village of Hyde Park in relation to gas companies, now in force, and which shall hereafter be in force in relation to the government of gas companies, and shall save and keep harmless the said village of and from all claims for damages growing out of any act on the part of said company, its successors or assigns, or their agents or servants.

SEC. 7. This ordinance shall be in force from and after its passage.

An Ordinance Amending an Ordinance Granting Rights to the Calumet Gas Company (Passed, Approved, and Filed November 17, 1887; Accepted November 18, 1887).

Be it ordained by the president and board of trustees of the village of Hyde Park: That section 1 of an ordinance granting rights and privileges to the Calumet Gas Company, passed November 9, 1885, be and the same is hereby amended to read as follows:

That permission and authority be and the same is hereby granted to the Calumet Gas Company, a corporation of the State of Illinois, to lay its mains, pipes, feeders and service pipes, in any and all the streets, alleys, avenues, highways, parks, squares and public grounds throughout the village of Hyde Park."

69 EXHIBIT J.

NEW YORK, *December* 16, 1902.

To the Board of Directors of the Peoples Gas Light & Coke Company.

DEAR SIRS: I believe that you are aware that I am, and for upwards of five years last past have been, the largest stockholder of the Peoples Gas Light & Coke Company, and of course, as such stockholder, I am vitally interested in the questions which have arisen under the ordinance of the Common Council of the City of Chicago reducing the price to be charged for illuminating and fuel gas to 75c. per thousand cubic feet.

I have caused to be submitted to my counsel the proceedings in the suit instituted in the Circuit Court of the United States at Chicago for the purpose of restraining the enforcement of this ordinance, on the ground that it constituted an impairment of the obligation of the contract contained in our charter, together with a copy of the opinions of Judge Grosscup, and have informed such counsel that the case has been appealed to the Supreme Court of the United States and will probably not be reached for argument until some time during the year 1904.

I am advised by counsel that the interests of the Peoples Gas Light & Coke Company may not be adequately protected by the pending litigation for the following reasons:

First. That the bill in the pending suit was dismissed for want of jurisdiction in the Circuit Court of the United States for the Northern District of Illinois, and that in view of such disposition the Supreme Court of the United States may limit the point which it will consider on the present appeal to the naked question of jurisdiction.

Secondly. That the present suit does not involve any question as to the power of the Common Council of the City of Chicago to reduce the charges of our company.

70 In view of the vital interest to all stockholders of these questions, I hereby request that you will cause to be instituted at the earliest practicable moment a new suit against the City of Chicago or otherwise, for the purpose of preventing the enforcement of this ordinance upon the ground that it impairs our charter contract and that the Common Council had no power to pass it. The facts stated in the amended bill of complaint in the pending suit I am advised fully show the necessity for a resort to equity for the protection of our rights.

It seems to me that the importance of this matter to the company and its stockholders cannot be exaggerated. If the ordinance is valid, the revenue of the company will be decreased one quarter of the present gross income and very much more than this of the net income.

Yours very truly,
(Signed) D. O. MILLS."

(Endorsed:) Filed June 8, 1903. Marshall E. Sampsell, Clerk.

71 And on to-wit: the sixth day of July, 1903, came the City of Chicago, by its solicitor, Granville W. Browning, Assistant Corporation Counsel and filed in the clerk's office of said Court in said entitled cause its certain Demurrer in words and figures following to-wit:

Demurrer of City of Chicago.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States for the Northern District of Illinois.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

The Demurrer of the City of Chicago, One of the Defendants Above Named, to the Bill of Darius O. Mills, plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demur showeth that the said plaintiff has not in and by the said bill made or stated any such cause as doth or ought to entitle him to any such discovery
72 or relief as is thereby sought or prayed for from or against this defendant.

Wherefore, and for divers other good causes of demur appearing in said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether it shall be compelled to make any other answer to the said bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

GRANVILLE W. BROWNING,
Solicitor for Defendant.

NORTHERN DISTRICT OF ILLINOIS,
County of Cook, ss:

Granville W. Browning makes solemn oath and says that he is Assistant Corporation Counsel and agent of the City of Chicago, the above named defendant, in this behalf, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

GRANVILLE W. BROWNING.

Subscribed and sworn to before me this 6th day of July A. D. 1903.

[SEAL.] VIRGINIA GUEST,
Notary Public.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

GRANVILLE W. BROWNING,
Of Counsel for the Defendant.

(Endorsed:) Filed Jul- 6, 1903. Marshall E. Sampsell, Clerk.

73 And on to-wit: the twenty-eighth day of October, being one of the days of the regular July term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of October 28, 1903.

26796

DARIUS O. MILLS
vs.
CITY OF CHICAGO ET AL.

By agreement of counsel, it is Ordered that the Demurrer to the Bill of Complaint herein be set down for argument on December 3rd next.

74 And afterwards to-wit: on the fifth day of December, being one of the days of the regular July term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of December 5, 1903.

26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO ET AL.

Now come the parties by their solicitors, and now comes on to be heard the Demurrer of the City of Chicago to the Bill of Complaint herein and the arguments being concluded and the Court not being sufficiently advised in the premises takes time to consider.

74½ And on to-wit: the twenty-fifth day of January, 1904, there was filed in the clerk's office of said Court in said entitled cause a certain Opinion in words and figures following to-wit:

75 *Opinion Overruling Demurrer.*

In the United States Circuit Court for the Northern District of Illinois. In Equity.

DARIUS O. MILLS, Complainant,
vs.
THE CITY OF CHICAGO and THE PEOPLE'S GAS LIGHT AND COKE COMPANY, Defendants.

GROSSCUP, *Circuit Judge:*

The bill is by a citizen of California, a stockholder of the People's Gas Light and Coke Company, suing in behalf of himself and all other stockholders of the company similarly situated, against the City of Chicago and the Gas Company, citizens of Illinois. The object of the bill is to restrain the city from enforcing an ordinance passed by the City Council of Chicago, October 15th, 1900, forbidding manufacturers of gas from demanding or collecting, from consumers of gas within the city, more than seventy-five cents per thousand cubic feet, and attaching a penalty of from twenty-five to two hundred dollars to each violation thereof. The bill charges
76 that the ordinance is invalid; first, because the City Council had no power from the State, to regulate gas rates; and secondly, because the ordinance impairs the obligation of an alleged contract embodied in the special charter of the People's Company by act of the legislature February 7th, 1865. (1 Laws 1865, p. 589.) Relief in equity is asked on the ground of prevention of multiplicity of suits, and because there is no adequate remedy at law to protect the company's rights in the premises.

Prior to the commencement of this suit, as the bill shows, another suit had been instituted by the People's Gas Light and Coke Company against the City of Chicago, based upon the ordinance in question, charging, first, that such ordinance was beyond the City Council's delegated powers, and secondly, if enforced, would impair the company's contract rights under its charter, and asking the same character of relief. That suit went to final hearing on demurrer to the bill, resulting in a decree dismissing the bill upon the merits, as to the alleged contract right, but without prejudice to any other suit in respect to the question of the city's power to regulate rates; and on appeal from this decree by the company, the suit is now pending in the Supreme Court of the United States.

In that case I held that the gas company obtained no immunity in its charter from the right of the State, in the exercise of its general powers, to reasonably regulate the rates at which gas should be manufactured and sold. Thus holding, the jurisdiction of the court failed, for the case no longer could be said to arise under the Constitution and laws of the United States. On that account I expressly declined to pass on the question whether the City Council had power delegated to it from the State to regulate rates; holding that such question was not before the court. But in the suit now under consideration, that question is brought directly in point.

77 The right of Mills, a stockholder, to maintain this bill, on the state of facts here existing, is challenged. Though it lies at the threshold of the case I will pass that question until the main question—the power of the City of Chicago to regulate rates of gas—is disposed of.

Has the city the power by ordinance to regulate the rates of gas supply? A municipal corporation possesses only such power as is granted by the legislature in express words, or such as is fairly implied from power expressly granted, or is essential to the specific object and purposes of municipal existence. No one has pretended that the regulation of the price of gas is essential to the specific object for which the City of Chicago was created; hence that source of possible power may be dismissed without further discussion.

The chief argument of counsel for the city is, that the power is to be found in the statute of Illinois, known as the City and Village Act, and their finger is laid on the eleventh, thirteenth and sixty-sixth sections as the clauses containing the grant. (Hurd's Rev. St., 1901, c. 24, sec. 62.) These sections are as follows:

"The City Council in cities and president and the board of trustees in villages shall have the following powers: * * *

"*Eleventh.*—To provide for the lighting of the same [streets]."

"*Thirteenth.*—To regulate the openings therein [in streets] for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas lights: *Provided, however*, that any company heretofore organized under the general laws of this state, or any association of persons organized, or which may be hereafter organized for the purpose of manufacturing illuminating gas to supply cities or villages, or the inhabitants thereof, with the same, shall have the right, by consent of the Common Council (subject to existing rights), to erect gas factories,
78 and lay down pipes in the streets or alleys of any city or village in this state, subject to such regulations as any such city or village may by ordinance impose."

"*Sixty-Sixth.*—To regulate the police of the city or village, and pass and enforce all necessary police ordinances."

It is plain to me that the sixty-sixth section, while granting power to regulate the police of the city or village, cannot be enlarged to include power to regulate the prices of gas. The power delegated by the state to the city is not the police power of the state. To so construe it would be to invest the city with nearly all the powers of the state—make the city practically a state by itself. Such manifestly was not the purpose of the section. The section looked, not to the police power of the state in its wide constitutional sense, but to a police in the sense of a local constabulary.

The eleventh section contains no such grant as is claimed. Its purpose is to provide merely for the lighting of streets. Power to light streets and power to regulate the prices at which a manufacturer shall furnish his commodity to the city, and the people living within the city, are generically so distinct that no discussion need ensue.

The chief claim of the city is based on the thirteenth section. The section reads as follows:

"To regulate the openings therein [in streets] for the laying of

gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas lights: *Provided, however,* that any company heretofore organized under the general laws of this state, or any association of persons organized, or which may be hereafter organized for the purpose of manufacturing illuminating gas to supply cities or villages, or the inhabitants thereof, with the same, shall have the right, by consent of the Common
79 Council (subject to existing rights) to erect gas factories, and lay down pipes in the streets or alleys of any city or village in this state, subject to such regulations as any such city or village may by ordinance impose."

Read as an entirety, the section clearly grants no general power to regulate rates. Thus treated, the last clause, "subject to such regulations as any such city or village may by ordinance impose," relates back to, and is limited by, the opening clause which is taken up solely in the regulation of openings in streets for the laying of gas or water pipes. But the court is asked, first, to divorce the proviso from the balance of the section, so that the proviso may stand as a section apart, and then to interpret the concluding clause as if the word "regulations" was meant to include the rates at which gas should be manufactured and sold, as well as the manner in which the gas factories should be erected and the pipes laid.

I do not feel myself at liberty to close my eyes to the proviso. Presumably it was meant to be read in connection with the whole section, but if I did, it would be unavailing. The context shows that the last clause was not intended to confer upon the City Council plenary power to regulate rates, as well as the manner in which gas factories should be erected and pipes laid down. The mere laying of gas pipes and the installation of gas plants, together with their repair, are the subject matter of a power widely separable in circumstance and in substance, from power to deal with the rates at which gas shall be manufactured and sold. The first belongs naturally to the city whose streets are to be occupied, for it is related intimately with the supervision of streets; the latter, with equal reason, is foreign naturally to the city, for the city is one of the parties in interest; and power to regulate prices ought not, in the usual course of
80 affairs, to go to a party interested. Until there is legislation, more unmistakable than the language used in this section, to indicate a purpose to grant the city power to fix rates, I shall not hold that such was the legislative intent. Unquestionably the power resides somewhere in the state, but until consciously delegated to some other body it remains in the state's general repository of power, the general assembly of the state. I may add that in this interpretation, I am but following the opinions of Mr. Francis Adams, Mr. Wm. G. Beale, Mr. C. S. Darrow and Mr. John W. Green, rendered by them severally as corporation counsel, as also what I take to be the opinion of Mr. Walker, during his incumbency of that office.

This brings me, then, to the question of jurisdiction. The first point urged is that a court of equity is without jurisdiction to restrain the enforcement of the invalid ordinance. To this I cannot consent. The Gas Company has more than three hundred thousand

in the face of this invalid ordinance, might lead to three hundred consumers. An attempted enforcement of its rates by suits at law, thousand prosecutions. Under what circumstances, it might be asked, would equity take jurisdiction to avoid a multiplicity of suits, if the present were not such a case.

The second point urged is that the jurisdiction of the court as a federal court fails, because, in a proper alignment of parties according to their interest, the Gas Company should be grouped with the complainant and on such grouping, diversity of citizenship; between both complainants and the defendant would disappear. It is sufficient to say that in the recent case of New Albany Waterworks *v.* Louisville Banking Co., 122 Fed. Rep., 776, the Circuit Court of Appeals for this circuit sustained federal jurisdiction in a case analogous, in all material respects, to the one under consideration.

81 The third point is, that the suit is collusive in this, that it is apparent that the Gas Company has refused to bring a suit in its own name in the state courts, to which it was relegated, solely that this complainant might obtain a footing in the federal court. This may, or may not, be the true explanation of the company's inaction. In the present state of the record it cannot be treated as the explanation. The bill avers that Mills demanded of the company, that it bring such suit, and that such demand was refused; and this, on the face of the record, is admitted by the demurrer. When the city raises the question by proper pleading, or points to some fact in the record that would authorize the court to act *sua sponte*, it will be time to inquire whether collusion in fact exists.

The fourth point against jurisdiction is the one on which greatest stress is laid. In the suit previously heard here, pending now on appeal by the Gas Company in the Supreme Court, the Gas Company challenged the validity of the ordinance, both because it was said to impair the company's contract right under its charter, and because the City Council was without power delegated to it by the State to regulate the prices of gas. The Court held in that case, that no charter contract as claimed existed, and so holding declined to hear or pass upon the question of delegated authority, for the reason that the cause came into the federal court solely as one arising under the Constitution and laws of the United States, wherefore the ground of federal jurisdiction failing, the other question involved—solely one of state law—must go out of court also, though without prejudice to a new suit in the proper forum.

I think, under such circumstances, it to be unquestioned, that had there been no appeal, and had the company refused to bring a new suit in the appropriate tribunal, a suit, such as this, would

82 lie at the instance of a stockholder. But the insistence of counsel is, that the appeal, by the Gas Company to the Supreme Court, on both grounds, shows that the company is still seeking, in the Supreme Court of the United States, to invalidate the ordinance as one not delegated under the laws of Illinois to the City Council, and in so doing meets fully its duty in the premises to its stockholders. The trouble is that such appeal does not fully meet the measure of the company's duty. The suit pending on ap-

peal will not bring a judgment touching the power of the City Council, if the impairment of contract question be determined against the company. This court has so held, and there is no reason to believe that the Supreme Court will hold otherwise. At any rate, until it is held otherwise, the former holding remains the law of the case.

But if the company has taken no measure conformable to law to prevent the wrong threatened, the right of the stockholder to take such measures cannot be disputed, and a measure conformable to law is to be tested, not by the company's opinion of the law, but by the law itself. The stockholder is entitled to the law, not to a mistaken view of the law; to an action that will lie, not to an action that must be dismissed for want of jurisdiction in the court resorted to.

The demurrer will be overruled and an injunction entered as prayed for in the bill.

(Endorsed)—Filed January 25, 1904—Marshall E. Sampsell, Clerk.

83 And on to-wit: the fifteenth day of February, 1904, being one of the days of the regular December term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of February 15, 1904.

26,796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY.

This cause coming on to be heard at this term upon the demurrer of the defendant, The City of Chicago, to the Bill of Complaint herein, the defendant, The Peoples Gas Light and Coke Company having failed to plead, and upon the motion of the complainant for a temporary injunction as prayed for in the bill; and it appearing to the Court that the complainant is entitled to an injunction against the enforcement of the Ordinance passed by the City Council of Chicago, October 15th, 1900, because the Council was without power to pass such ordinance.

It is Ordered after hearing Granville W. Browning, Esq., of counsel for the City of Chicago, in support of the demurrer and opposition to the motion aforesaid, and William D. Guthrie, Esq., of counsel for the complainant in opposition to the demurrer and in support of the motion aforesaid and upon motion of Guthrie, Cravath & Henderson and Henry W. Wales, Jr., solicitors for complainant that the said demurrer be and the same is hereby in all things overruled, that the complainant have judgment thereon and that an injunction be entered as prayed for in the said bill, but with leave to

the defendant The City of Chicago, to withdraw its said de-
84 murrer and answer the said bill within sixty days, on payment of costs; and it is hereby further Ordered, Adjudged and Decreed that a writ of injunction issue out of and under the seal of this Court directed to The City of Chicago, its officers, agents, servants and employees and any and every person acting under and by virtue of the authority of said ordinance, restraining and enjoining them and each of them from in any way enforcing or attempting to enforce said ordinance or any of the provisions thereof against The Peoples Gas Light and Coke Company, and directed to The Peoples Gas Light and Coke Company, its officers, servants, agents and employees, restraining and enjoining them and each of them from accepting or complying with said ordinance or any of the provisions thereof, and from submitting thereto until the further order of the Court.

85 And on to-wit: the thirteenth day of April, 1904, being one of the days of the regular December term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of April 13, 1904.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

Now come the parties to the above entitled cause, by their solicitors, and upon stipulation filed herein, the Court being fully advised in the premises, It is hereby ordered that the time within which the City of Chicago may withdraw its demurrer and file answer in the above entitled cause be, and it is hereby extended to April 25th, A. D. 1904.

86 And on to-wit: the twenty-third day of April, 1904, being one of the days of the regular December term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of April 23, 1904.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

Now come the parties to the above entitled cause, by their solicitors, and upon motion of the solicitor for the defendant, The City of Chicago, and upon stipulation filed herein, the Court being fully advised in the premises. It is hereby Ordered that the time within which the defendant The City of Chicago may withdraw its demurrer and file its answer herein be, and it is hereby, extended to Tuesday, the 3d day of May, A. D. 1904.

87 And on to-wit: the second day of May, 1904, being one of the days of the regular December term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry, to-wit:

Order of May 2, 1904.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

Now come the parties to the above entitled cause by their solicitors, and upon motion of the solicitor for the defendant, The City of Chicago, and upon stipulation filed herein, the Court being fully advised in the premises. It is hereby Ordered that the time within which the defendant, The City of Chicago may withdraw its demurrer and file its answer herein, and it is hereby extended to Tuesday, the 10th day of May, A. D. 1904.

88 And on to-wit: the tenth day of May, 1904, being one of the days of the regular December term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of May 10, 1904.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

Now come the parties to the above entitled cause, by their solicitors, and upon motion of the solicitor for the defendant, The City of Chicago, the Court being fully advised in the premises, It is hereby Ordered that the time within which the defendant, The City of Chicago may withdraw its demurrer and file its answer herein be, and it is hereby extended to Thursday, the twelfth (12th) day of May, A. D. 1904.

89 And on to-wit: the eleventh day of May, 1904, came the City of Chicago by its solicitors Mr. Granville W. Browning and Mr. Edgar B. Tolman of counsel and filed in the clerk's office of said Court its certain answer to the bill of complaint in words and figures following to-wit:

Answer of City of Chicago.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit Court of the United States for the Northern District of Illinois, Northern Division. In Equity.

No. 26,796.

DARIUS O. MILLS, Complainant,
against
THE CITY OF CHICAGO, and THE PEOPLES GAS LIGHT & COKE COMPANY, Defendants.

The Separate Answer of the City of Chicago, One of the Above Named Defendants, to the Bill of Complaint of Darius O. Mills, the Complainant Above Named:

90 This defendant saving and reserving unto itself all benefit and advantage of exception, or otherwise, which can or may be had or taken to the many errors, uncertainties and insufficiencies in the said complainant's bill of complaint contained, for answer unto the same or unto so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering says; that it has no knowledge or information other than from the averments of the said bill as to whether or not the complainant therein, Darius O. Mills, is or is not a resident and citizen of

the State of California and, therefore, it neither admits or denies the allegations in this behalf but calls for full proof thereof, if deemed material;

This defendant further answering says, that if the said complainant is a citizen and a resident of the State of California, as he avers, nevertheless, he has no right under the laws of the United States to file his bill in this court, in the premises, the Circuit Court of the United States having no jurisdiction of the bill filed herein by said complainant, and this defendant asks that it may have the same advantage of the matter therein set out as if it had demurred to the same and stood upon the demurrer;

This defendant further answering, admits that the original Peoples Gas Light & Coke Company was a corporation duly or-
91 ganized and existing under and by virtue of a special act of the legislature of the State of Illinois, approved February 12, 1855, and amended by special act of the legislature approved February 7, 1865, but denies that the present Peoples Gas Light & Coke Company, called in said bill, "The defendant Company," is the same corporation organized and existing under the act before mentioned, but states and so charges the fact to be, that the present corporation, the Peoples Gas Light & Coke Company, called in the said bill "the defendant Company," is a consolidated company and derives its existence, powers and duties under and by virtue of the fact that the original company and others voluntarily availed themselves of the provisions of an act of the Legislature of the State of Illinois known as the Gas Consolidation Act, and hereinafter more particularly referred to; and this defendant denies that the present company is other than a consolidated company deriving its existence and powers under and by virtue of the said act of 1897;

This defendant further answering, admits that the original Peoples Gas Light & Coke Company was incorporated by the act of February 12, 1855, as set out in said bill.

92 This defendant further answering, admits that the amendatory act approved February 7, 1865, is correctly set out in said bill, but this defendant states and so charges the fact to be, that any privileges and immunities that may have been granted or claimed to be granted by said Act, and amendatory Act of the legislature, to the original Peoples Gas Light & Coke Company, were lost and ceased to exist, if any there were, when the original Peoples Gas Light & Coke Company voluntarily entered into the merger under said act of 1897, which said merger, under the last mentioned act, now exists as the Consolidated Company, the Peoples Gas Light & Coke Company.

This defendant further answering, admits that the original Peoples Gas Light & Coke Company accepted the said act of 1855, and said amendatory act of 1865, and in reliance thereupon and with the consent of the City of Chicago, constructed and erected gas works and laid pipes in portions of that part of the said City of Chicago known as the West town, for the distribution and delivery of gas to the consumers thereof in that part of said city.

93 This defendant further answering, denies that the said original Company ever laid its pipes or furnished gas to the citizens of Chicago, in that city, generally.

This defendant further answering, admits that the consent of the City of Chicago to the said original Peoples Gas Light & Coke Company doing business in said city, was expressed by the certain ordinance adopted August 30th, 1858, and set out in said bill.

And this defendant further answering, states and so charges the fact to be, that thereafter the said Company accepted the said ordinance and acted under the same, and that in and by the said ordinance was provided that the permission and authority therein and thereby granted to said original Peoples Gas Light & Coke Company was so granted, subject to the "reasonable regulations which might thereafter be made by the city council concerning the operation" of the said original gas Company, and that in the said ordinance it was provided that the operation of the said original Gas Company
94 should at all times be subject to the power in the city council reserved therein to pass such ordinances and resolutions as said city council in its discretion might deem reasonable.

And this defendant further answering, says, and so charges the fact to be, that the said provision in said ordinance was general, and included and reserved to the city council at all times the right to regulate the prices to be charged for gas by said Company within reasonable bounds.

This defendant, further answering, states and charges the fact to be that the said original Company accepted the said ordinance and laid its mains thereunder and proceeded to do business thereunder, and that therein and thereby the said provision reserving to the city council the right of regulation, including the right of regulation of prices, became a contract between the City of Chicago and the said Company.

And this defendant further answering, says and so charges the fact to be that this right of regulation by the city Council was never lost or interfered with when the said company voluntarily
95 took advantage of the provisions of the said act of 1897.

This defendant further answering admits that up to the date of the said consolidation under the said act of 1897, the said original Company invested money and constructed plants and appliances, laid down pipes and carried on the business of manufacturing and furnishing gas in certain parts of the City of Chicago, but this defendant denies that it laid mains or manufactured or furnished gas to consumers throughout the city of Chicago, but says that such furnishing of gas was limited to only a small part of the said city of Chicago, and this defendant denies that the said original Company has continuously for more than thirty-nine (39) years last past remained in the business of manufacturing, selling and distributing gas in the said City, but states that said original Company ceased to so manufacture, furnish and distribute gas when it entered into the said merger, or consolidation, in or about the year 1898; and this defendant denies that said original company is now engaged in the business of manufacturing, selling and distributing

gas, but states that the said Company ceased to do business of any kind in or about the year 1898, and that since the said con-
96 solidation and merger hereinafter referred to, a consolidated company bearing the name of the Peoples Gas Light & Coke Company has continued to furnish gas, not only in the old territory of the old Peoples Gas Light & Coke Company, but throughout the larger part of the City of Chicago.

This defendant further answering, denies that a contract by and between the said original company and the State of Illinois any longer exists, excepts as certain powers and duties are reserved in and by the provisions of the said act of 1897, but states that when the said original company, voluntarily took advantage of the provisions of the Consolidation Act of 1897, the said original company thereby and in accordance with the provisions of the said act, lost any and all immunities or privileges which it might theretofore have had.

This defendant further answering, denies that the said original company had invested capital and funds up to the date of the filing of its bill of complaint, in real estate in said city, to the value of up to $10,000,000, but states that the said original company ceased investing money, or doing any other business upon its entry and merger into the consolidated company, and that any capital
97 and funds invested in real estate in said city, by said original Company, has become the property of the said Consolidated Company, upon said merger, and this defendant neither admits nor denies that the real estate of the consolidated company had, before the date of the filing of the bill herein, amounted in value to upwards of $10,000,000, and calls for full proof thereof if deemed material.

This defendant further answering, denies that said original company has building-, factories, stores, plants or any other apparatus or any other property in the City of Chicago, but says that all property originally belonging to said Company, now belongs to said consolidated company, and denies that said original company owns or maintains 1700 miles of pipe and mains, or any other pipes and mains in said City of Chicago, but states that all mains and pipes formerly belonging to said company, now belong to the consolidated company.

This defendant further answering, admits that the consolidated company has no authorized capital stock of $35,000,000, but has no knowledge or information except by the allegations of said bill as to whether or not $32,969,100.00 is now issued and out-
98 standing, or as to whether or not $34,496,000.00, face value, of mortgage bonds are outstanding, and therefore neither admits nor denies the allegations, but calls for full proof thereof if deemed, material, but this defendant states that the said stock and bonds have nothing whatever to do with the said original company, but are the stock and bonds of the consolidated company aforesaid.

This defendant further answering, says that it has no knowledge or information other than from the allegations of said bill, as to whether said complainant, prior to January 1st, 1898, became the owner of more than 20,000 shares of the capital stock of said com-

pany, or as to whether or not he is still such owner, or whether or not he owns and holds mortgage bonds of said company, therefore this defendant neither admits or denies the allegations in said behalf but calls for full proof thereof if deemed material.

This defendant further answering states that even if it shall appear from the evidence that said complainant is the owner of stock or bonds of the consolidated company, that nevertheless the said complainant has no right under the law to file his said bill of complaint herein, this court having no jurisdiction to consider a bill such as that filed by complainant herein; therefore this defendant asks that said bill be dismissed for want *for want* of jurisdiction in
99 this court and asks the same advantage hereof as if it had set up the same by way of a demurrer and stood upon the said demurrer.

This defendant further answering says that it has no information other than from said bill as to whether or not for several years the said original company charged to the consumers in Chicago, a net rate of $3.75 per 1000 feet in or about the year 1865, and therefore this defendant neither admits nor denies the allegations in said behalf, but calls for full proof thereof if deemed material.

This defendant further answering, admits that since about January 1st, 1896, the original company charged one dollar net per thousand feet for its gas in the said city of Chicago, up to the time of the consolidation.

This defendant further answering, says that it has no knowledge or information other than from the allegation of said bill, as to whether or not the reductions made by the original company, to the rate of $1.00 per 1000 feet were made as the free will and voluntary act of the defendant, and therefore it neither admits nor
100 denies the allegations in said behalf, but calls for full proof thereof if deemed material.

This defendant further answering states that even if the reductions were not made by statute of the State of Illinois, or by ordinance of the City of Chicago, that said reductions were compelled to be made by competition, or threatened competition of other gas companies.

This defendant further answering admits that for many years prior to the consolidation hereinafter set out, this defendant was a customer of the original Company in certain parts of its territory, and that since the said consolidation the City of Chicago has been and now is a customer of the said Consolidated Company in a large part of this defendant's territory.

This defendant further answering neither admits nor denies the allegations that the gas bills rendered to this defendant by the Consolidated Company in the year 1899 amounted to upwards of $550,000.00, and during the year 1900 amounted to upwards of $490,000.00, but calls for strict proof thereof, if deemed material.

101 This defendant further answering, denies that any bills have ben rendered to the City by the original Peoples Gas Light & Coke Company, or that any payments have been made by

the city to the said company since the merger and consolidation hereinafter set out.

This defendant further answering, denies that the original Peoples Gas Light & Coke Company acquired and took over any gas mains, pipes, feeders, surface pipes, connections or appurtenances or any manufacturing plants, building machinery or property of the Chicago Gas Light & Coke Company, Consumers Gas Company, Equitable Gas Light & Fuel Company, the Suburban Gas Company, the Lake Gas Company, the Illinois Light Heat & Power Company, or the Chicago Economic Fuel Gas Company, or of any or either of them, in August 1897, or any other time, or of the Mutual Fuel Gas Company, the Hyde Park Gas Company, or either of them in January, 1898, or at any other time, or of the Calumet Gas Company, in November 1898, or at any other time, under and by virtue of the power and authority granted by the consolidation act of 1897, or of any other act.

This defendant further answering denies that the said Peoples Gas Light & Coke Company had any power in or by its charter
102 or its amended charter to take over and acquire the gas mains, pipes, feeders, plants or property of any name or nature of the said Gas Companies, enumerated in said bill, or of any other gas companies in said city of Chicago, in such manner as would enable said Peoples Gas Light & Coke Company to acquire the franchises and rights of the said other companies, or either of them, or in such manner as to destroy the competition of the said companies and to insure that no competition would thereafter emenate from them or from either of them, and this defendant so states and charges the fact to be that the only way by which the said franchises, plants and business of the said original Peoples Company and of the said original companies enumerated in said bill, could be merged and consolidated into one company, is under and by virtue of the said act of 1897.

This defendant further answering, denies that said original company acquired the said plants or any part of the same, or any other property of any name or nature; of the said other companies
103 so enumerated, or either of them, and denies that the said company retained its entity as an original company under its said charter of 1855, and amended charter of 1865, but states and so charges the fact to be that said original Peoples Gas Light & Coke Company, in connection with the other said companies so enumerated in said bill each voluntarily and as an independent entity, entered into, under the terms of the said act of 1898, and merged into, a consolidation or consolidated company called the Peoples Gas Light & Coke Company.

This defendant further answering, says, that all the property, of every name and nature, of all of the said companies, including the property of every name and nature of the original Peoples Gas Light & Coke Company, was transferred to and became the sole property of, the said Consolidated Company, under and by virtue of the terms of the said act of 1897.

This defendant, further answering, denies that any of the properties, as enumerated, were taken over or acquired by the original

Peoples Gas Light & Coke Company, but states that they were
104 acquired and taken over by said Consolidated Company, and admits that at the time of their transfer and acquisition they were situated within the corporate limits of the City of Chicago.

And this defendant denies that the said companies were consolidated and merged into the original Peoples Gas Light & Coke Company, but states and so charges the fact to be, that the original Peoples Gas Light & Coke Company, with all the other companies enumerated, were consolidated and merged into the Consolidated Peoples Coal & Coke Company.

This defendant, further answering, admits that all of the original companies, as stated in said Bill, ceased to exist, and ceased to manufacture and supply gas to the consumers thereof in the City of Chicago, immediately upon such merger, and states, and so charges the fact to be, that upon such merger the original Peoples Gas Light & Coke Company ceased to do business so far as any immunities previously enjoyed, were concerned.

105 This defendant, further answering, admits that all of said gas companies, at the time of said merger, were corporations created by the laws of the State of Illinois, and under and by authority of said laws were severally engaged in the manufacture, sale and distribution of gas in various sections of the city of Chicago; but this defendant denies that any of said companies, or their properties, were acquired by the original Peoples Gas Light & Coke Company, but states and so charges the fact to be, that the *status* of the Peoples Gas Light & Coke Company, in the Consolidated Company, is the same, and the rights of the Peoples Gas Light & Coke Company in the Consolidated Peoples Coal & Coke Company are the same and none other, than the rights, privileges and powers of all the other enumerated companies which voluntarily with the said Peoples Gas Light & Coke Company, entered into the Consolidated Company.

This defendant, further answering, states that it has no knowledge or information other than from said bill as to whether or not said Consumers Gas Company, the Equitable Gas Light & Fuel
106 Company and the Chicago Economic Fuel Gas Company furnished gas only in a portion of the south division of the City of Chicago, and therefore neither admits nor denies the allegations in such behalf, but calls for full proof thereof, if deemed material.

This defendant admits that the Chicago Gas Light & Coke Company supplied gas in said north division of the City of Chicago, but if deemed material, calls for strict proof as to the specific parts of all three divisions of the said City in which the said Chicago Gas Light & Coke Company supplied gas prior to the consolidation.

The defendant, further answering, says that it has no knowledge or information, except from said Bill, as to whether or not the Suburban Gas Company furnished gas in part of the teritory formerly within the town of Lakeview, and neither admits nor denies the allegations in such behalf, but calls for strict proof thereof if deemed material.

This defendant, further answering, says that it has no
107 knowledge or information other than from said Bill, as to whether or not the Mutual Fuel Gas Company and the Hyde

Park Gas Company supplied gas in part of the territory formerly comprised within the village of Hyde Park, or as to whether or not the Calumet Gas Light & Coke Company supplied gas in a certain other part of the territory formerly comprised within the village of Hyde Park, or as to whether or not the Lake Gas Company supplied gas in part of the territory formerly within the limits of the Town of Lake, and neither admits or denies the allegations in such behalf, but calls for strict proof thereof if deemed material.

This defendant further answering, says that it has no knowledge or information other than from said Bill, as to whether or not the Illinois Light, Heat & Power Company distributed gas, or as to whether or not shortly after the erection of its plant the same was leased to the original Chicago Gas Light & Coke Company, or whether or not the original Chicago Gas Light & Coke
107½ Company operated the same, and therefore neither admits nor denies the allegations in such behalf, but calls for full proof thereof, if deemed material.

This defendant, further answering, denies that the defendant Company distributed gas, or ever did business prior to the consolidation, in the west division of the City of Chicago or otherwise, but says that the defendant Company, to-wit: the Consolidated Company, has only existed since some time in the year 1898, when the same came into existence by the consolidation of the original Peoples Gas Light & Coke Company and all the other said companies as set out hereafter, but this defendant admits that the original Peoples Gas Light & Coke Company distributed gas chiefly in the west division of the City of Chicago, and neither admits nor denies the allegations as to whether or not it has connections and pipes extending into the south division of the said city, but this defendant calls for full proof of the specific parts of the west division and of the south division in which the original Peoples Gas Light & Coke
108 Company has its mains, and where it distributed its gas, if the same be deemed material.

Defendant, further answering, says that it has no information or belief other than from said bill, as to whether or not the plants, etc., of all the said gas companies enumerated were insufficient to supply the gas necessary to be supplied to the City of Chicago and its inhabitants, and therefore it neither admits nor denies the allegations in such behalf, but calls for full proof thereof if deemed material.

And defendant, further answering, admits that the Chicago Gas Light & Coke Company was organized under a special act of the Legislature of the State of Illinois, approved February 12th, 1849, as amended by an act approved February 9th, 1855.

Defendant, further answering, admits that the Hyde Park Gas Company was organized May 26th, 1871, as set out in said bill, and that by an ordinance adopted as set out in said Bill, the village of Hyde Park authorized said company to occupy the streets and other public places of the City, now within the City of Chicago.

109 This defendant further answering, admits that all the remainder of the said gas companies enumerated were organized under the general incorporation laws of the State of Illinois, and

admits that the said Consumers Gas Company was organized November 21, 1886, and that the same was authorized by ordinance of said City, adopted April 28th, 1882, to sell and distribute gas within the City of Chicago, as set out in said ordinance.

This defendant admits that the Equitable Gas Light & Fuel Company was organized August 3, 1885, and was authorized to sell and distribute gas in the City of Chicago by ordinance of said City adopted August 10, 1885, as provided in said ordinance.

This defendant, further answering, says that the Lake Gas Company was organized July 5, 1881, and was authorized to sell and distribute gas within the Town of Lake, now within the City of Chicago, by ordinance of the said town adopted July 5, 1881, as set out in said ordinance, and admits that the Suburban Gas Company was organized November 5, 1884, and was authorized to sell and
110 distribute gas in the Town of Lake View, now within the City of Chicago, by ordinance of said town adopted October 29, 1884, as set out in ordinance.

This defendant, further answering, admits that the Chicago Economic Fuel Gas Company was organized December 9, 1889, and authorized to sell and distribute gas in the City of Chicago, by ordinance of said city adopted December 22, 1890, and July 13, 1891, as set out in said ordinance, and admits that the Mutual Fuel Gas Company was organized April 29, 1889, and acquired from the Hank & McClary — the right to sell its said gas in the village of Hyde Park, now within the city of Chicago, which originally had been acquired by said Hank & McClary by ordinance of said village adopted March 21, 1884, as set out in said ordinance, and admits that the Calumet Gas Company was organized in 1885, and was authorized to sell and distribute gas in the village of Hyde Park, now within the City of Chicago, by ordinance of said village adopted November 9, 1885, as set out in said ordinance.

111 This defendant further answering, denies that the plants of the said several companies were bought by the old Peoples Gas Light & Coke Company, or that there was any sale or conveyance by said several companies or either of them to the old Peoples Gas Light & Coke Company, but this defendant shows, that all of the said companies, together with the Peoples Gas Light & Coke Company, voluntarily entered into a merger and voluntarily agreed to call the merged or consolidated company, the Peoples Gas Light & Coke Company.

This defendant further answering, denies the innuendo set up in clause six of the said bill of complaint, wherein the complainant alleges that at the time of the acquisition or taking over of the defendant company of said plants, certain things were true, and states that the original Peoples Gas Light & Coke Company did not take over or acquire any plants, pipes or mains, or other property of the said gas companies, or either of them, but that the plants, pipes, mains and property of the said gas companies, including those of the Peoples Gas Light & Coke Company, were turned over and con-
112 veyed by the voluntary merger of all of said companies, including the Peoples Gas Light & Coke Company, to the con-

solidated and merged company called the Peoples Gas Light & Coke Company.

This defendant, further answering, says that it has no information or belief other than from the said bill of complaint, as to whether or not the said original companies were indebted upon legal obligations secured by mortgages or deeds of trust on the properties of said companies, severally executed and delivered by said companies, or whether or not said obligations amount in the aggregate to the sum of over $19,000,000, or as to whether or not said obligations were assumed by the Consolidated Peoples Gas Light & Coke Company, and therefore neither admits nor denies the allegations in such behalf in said bill of complaint contained, but calls for strict proof thereof, if deemed material.

This defendant, further answering, says that it has no information other than from said bill, as to whether or not other valuable considerations were paid by the consolidated company to the said
113 original companies for the property turned over by said original companies, and therefore, this defendant neither admits nor denies the allegations in such behalf in said bill contained, but calls for full proof thereof if deemed material.

This defendant further answering, denies that during the year preceding the first of the said mergers and consolidations under the said act of 1897, that the defendant company was extensively engaged in the business of furnishing gas to the consumers thereof in the City of Chicago, and that it charged and received for all gas sold by it the net rate of one dollar per thousand cubic feet; but this defendant says, that during the year immediately preceding the first of said consolidations, the original Peoples Gas Light & Coke Company was engaged in the business of furnishing gas to the consumers thereof in the City of Chicago, and this defendant has no information or belief other than from said bill as to whether or not the said original Peoples Gas Light & Coke Company was charging
114 during the year preceding said consolidation the net rate price of one dollar per thousand cubic feet for the gas manufactured and sold by it, and, therefore, this defendant neither admits nor denies the allegations in such behalf, but calls for full proof thereof if deemed material.

This defendant further answering denies that since said merger and consolidation under the act of 1897, the consolidated Peoples Gas Light & Coke Company has uniformly charged the same rate or price for all gas sold by it in said city, but states that in various parts of the city and at various times it has sold gas in said city of Chicago for less than the sum of one dollar per thousand feet.

This defendant, further answering, admits that said company has not increased the price charged by it over the sum of one dollar per thousand cubic feet, but has no information other than from said bill as to whether or not the gas so supplied and sold by it, the
115 said defendant company, has been better in quality and of higher candle power than the gas furnished by the original Peoples Gas Light & Coke Company and the other original companies, and therefore, this defendant neither admits nor denies the

allegations in such behalf, but calls for full proof thereof if deemed material; but this defendant denies that the said defendant, the Peoples Gas Light & Coke Company ever did business in the City of Chicago prior to said consolidation, and that it charged any price for any produce, but shows that the said defendant, the Peoples Gas Light & Coke Company is the creature entirely of the statute of 1897, and derives its existence and powers as a consolidated company purely from the said act, and that the original Peoples Gas Light & Coke Company, upon the merger and consolidation, ceased to exist except as provided in the act of 1897, except for certain provisional, contingent and limited purposes as provided in the act of 1897.

This defendant further answering, denies the in-uendo in the 8th section of the said bill wherein it is stated that the defendant company existed prior to the consolidation, and this defendant
116 states that it has no information other than from said bill, as to whether or not there were at the time of the merger and consolidation, or as to whether there are now, other gas companies engaged in the manufacture, sale and distribution of gas in the city of Chicago and therefore, it neither admits nor denies the allegations in such behalf but calls for full proof thereof if deemed material.

This defendant further answering states, that it has no knowledge other than from the constructive notice arising from the filing of the merg*ag*er and consolidation papers in the office of the Recorder of Deeds of Cook County, Illinois, at the time of said merger of said companies.

This defendant further answering, states, that it neither acquiesced therein no- objected thereto because, so long as the inhabitants of the city of Chicago and the city itself, so far as it may need gas, are supplied with gas at a reasonable rate, it is not interested in what corporation does supply such gas.

This defendant further answering says that it has ordered the said defendant company to do various acts in connection with the plants for the manufacture of gas in the city of Chicago and has ordered the said defendant company to extend its mains and provide
117 various parts of the city of Chicago with the m*ai*n*e*s for acquiring gas, but denies that any such orders or any regulation that has been enforced by the city of Chicago can in any way be held to be an acquiescence in the claim of said Gas Company to the right at all times to charge one dollar per thousand feet for gas, and denies that any acts of the city of Chicago in regulating said Gas Company in the laying of pipes and furnishing of gas to the inhabitants of said city of Chicago, can be held to be an acquiescence in any of the claims of the said Gas Company or its stockholders that the said gas company has any privilege or immunity from proper regulation by the City Council of the City of Chicago, including the regulation of the price of gas charged by said company.

This defendant denies that by any act, either those set out in the bill, or any act, has it acquiesced in any of the said claims for immunity of the said company and denies that it is estopped by any of its said acts from regulating the price of gas to be furnished by said company.

This defendant further answering says that it has no information or belief other than from said bill as to whether or not since
118 August 1897, the defendant company has expended large sums of money in acquiring land in various sections of the city of Chicago, and building plants and extending its mains, and whether it has spent large sums of money in maintaining and extending its pipes, mains and plants and enlarging the same in various parts of the city of Chicago, or whether there are several hundred miles of gas pipes in the streets of said city which are no longer available for use in distributing gas because laid in the early days, and too small, and as to whether or not such miles of gas mains have been replaced by larger and more modern appliances, or as to whether or not upwards of five hundred miles of gas mains and pipes have been annually laid by said defendant company since the acquirement of the aforesaid properties, and therefore, this defendant neither admits nor denies the allegations in such behalf but calls for full proof thereof if deemed material; but this defendant says that any such betterments, enlargements and improvements, if any were made by said defendant company, were made by the defendant in furtherance of its duty and obligation to supply the city and its inhabitants with gas of the best quality and in the best manner, and the said carrying out of its duty by the said defendant company is no way creates an equity in the said company by which said company will be allowed *will be allowed* to charge a greater than a reasonable price for its gas or create an equity under which said company will have or enjoy an immunity or privilege from proper regulation by the city council.

119 This defendant further answering, admits that on the 15th day of October 1900, it passed the ordinance set out in said bill and that said ordinance is now and has been since its adoption, in full effect and a valid and legal ordinance of the city of Chicago, but this defendant denies that the said ordinance was adopted and passed without investigation.

This defendant further answering, states, that there is no legal obligation upon the city of Chicago to first institute judicial proceedings before said counsel shall pass an ordinance fixing the price of gas, and this defendant states, that the price of 75 cents so fixed by said ordinance is a reasonable and proper price to be charged by said company for gas furnished by it; that any larger price charged within the limits of the city of Chicago is exorbitant, unfair and oppressive. This defendant admits and states, that any regulation by its city council must be limited to a reasonable price, but states and so charges the fact to be, that the price of 75 cents, fixed by said ordinance October 15th, 1900, is a reasonable price to be charged by said company for gas furnished to the city of Chicago, and that such price gives the company a large profit over and above all its charges, costs and expenses.

120 This defendant further answering, admits and states that the power and authority to enact said ordinance of October 15th, 1900, is given to the city of Chicago by the State of Illinois by the provisions of the charter granted to the original Peoples Gas Light & Coke Company in the year 1865, as set out in said bill; that

it further derives said power from the reservation contained in the ordinance given to the original Peoples Gas Light & Coke Company, August 30th, 1858, as set out in said bill, and that it further derives such power from the 13th and 66th subdivision- of section 1, Article 5, Chapter 24, of the revised statutes of the State of Illinois.

This defendant further answering, says that said ordinance of October 15th, 1906, does not constitute an impairment by law of the State of Illinois, of the obligations of any contract belonging to the defendant company, for the reason that when the said original companies voluntarily entered into the said defendant company, under and by virtue of the provisions of the consolidation act of 1897, each and every of the said original companies lost and surrendered every immunity and privilege from regulation by the city or other public authorities, that either of such companies might have had by their original charters and that the consolidated Company under and by virtue of the provision of the said
121 act of 1897, continues to carry on the powers and duties of the said original companies, stripped of any and all privileges and immunities which the said companies may have claimed or enjoyed.

This defendant further answering says, that the said act of 1897, does not continue in force any immunity or privilege from public regulation enjoyed or claimed by the original companies, and that the said defendant company carries on its powers, stripped of any and all immunity from regulation, and that the said defendant company is subject to all and every power of regulation enjoyed by the city council under and by virtue of the laws of Illinois.

This defendant further answering, denies that the original Peoples Gas Light & Coke Company had or enjoyed any immunity from regulation by the city of Chicago and says that all claims of immunity and all questions of contract in the defendant, the consolidated Peoples Gas Light & Coke Company, to charge any special price for gas, at any time, are *res adjudicata,* all such claims and pretences having been decided against the company and in favor of this defendant by decision and judgment of the *of the*
122 Supreme Court of the United States, in a certain appeal pending therein, entitled "The Peoples Gas Light & Coke Company against the City of Chicago," heard and determined within the present year.

This defendant further answering, denies that the legislature of the State of Illinois did not at any time authorize or empower the city council of the city of Chicago to fix or regulate the prices to be charged by the defendant company for gas furnished by it, but states that the legislature has fully and completely authorized and empowered the city council of the city of Chicago to fix and regulate the price of gas to be charged to the city of Chicago and its inhabitants; and this defendant states and so charges the fact to be, that the said ordinance was passed with authority, and is a valid and legal ordinance, in full force and effect.

This defendant further answering, admits that this defendant will enforce said ordinance against the defendant company and all

other gas companies doing business within the city limits, as soon as the legal entanglements and delays set up by said defendant company and its stockholders are disposed of.

This defendant has no information or belief other than from said bill as to whether or not numerous citizens have refused
123 to pay for gas except at the legal rate, or as to whether or not the defendant company could not enforce its rights at common law, and therefore, neither admits nor denies the allegations in such behalf, but calls for full proof thereof if deemed material.

This defendant states and so charges the fact to be, that the citizens of this defendant are entitled under the law to resist all attempts of the said defendant company to charge more than seventy-five cents a thousand feet for gas, and that in so doing they are only exercising their legal rights under and by virtue of the laws of the State of Illinois.

This defendant has no information or belief other than from said bill as to whether or not the defendant company has now upwards of three hundred thousand customers in the city of Chicago, and therefore neither admits nor denies the allegations in such behalf, but calls for full proof of the same if deemed material.

This defendant further answering, states that the complaints and allegations contained in clause 13 of the said bill, are merely the losses and sufferings which will come upon any person who declines to obey the laws and valid ordinances of the City of Chicago, and that the facts therein set out furnish no ground for the inter-
124 vention of a court of equity.

This defendant states that if said company will uphold the said ordinance of October 15th, 1900, without further attempts to delay the enforcement of the same, it will derive large and sufficient profits by charging the legal rate so fixed by said ordinance, and will escape the suits, fines and punishments set out and complained of in said 13th clause.

This defendant further answering, admits that the enforcement of the said ordinance will reduce the amount of the gross receipts of the said defendant company, but denies that the company and its stockholders will suffer any loss for such enforcement which will be inequitable and unfair, but states that all moneys received by said defendant company over and above 75 cents per thousand feet, are inequitable, unfair and exorbitant profits and such profits as no court will permit to be exacted.

This defendant further answering, denies that the refusal or failure to comply with the ordinances, if only for the purpose of having the question tested in good faith in a court of law, would involve the risk of absolute ruin of the defendant company, and states that as a matter of fact the defendant company since Jan-
125 uary 1st, 1901, has been testing the legality and validity of said ordinance, and has carried litigation, testing the validity of said ordinance, to the Supreme Court of the United States, and this defendant further answering, states, that the said Supreme Court of the United States has determined all questions of which it had

jurisdiction in such proceedings, in favor of the city of Chicago, and against the said defendant company.

This defendant further answering says, that such litigation, testing the validity of the said ordinance has not ruined the defendant company or caused it any illegal loss, and this defendant further answering, denies that there is no remedy except in a court of equity to test the validity of said ordinance, and denies that the penalties suffered by the said company could in any way be confiscatory, or could deprive the defendant company of its liberty of contract, or of its property without due process of law, in contravention of the 14th amendment of the Constitution of the United States.

This defendant further answering, admits that the defendant company began a suit in equity in the Circuit Court of the United States, for the Northern District of Illinois, against this defendant, and admits that one of the grounds set out in said bill was that
126 the ordinance stated, constituted an impairment of the obligation of the defendant's alleged charter contract.

But this defendant further answering states, that in addition to said ground of impairment of contract, said defendant company in its said bill also raised the question of the power of the city of Chicago to pass the ordinance of October 15th, 1900, and this defendant shows and so states the fact to be, that exactly the same questions were raised in the said bill, in the said cause, and were argued by counsel in the attempt of the said company to maintain the said bill, as are raised and argued in the pending cause by the complainant.

This defendant further answering, admits that a final decree was entered dismissing the bill of complaint of the said defendant company, but denies that the bill was dismissed for want of jurisdiction, but states and so charges the fact to be that a final decree was entered in terms dismissing said bill of complaint upon the express ground that there was no impairment of contract and that the said defendant company had no claim to the contract to charge one dollar as set up and claimed — by its said bill of complaint and set up and claimed herein by the bill of complaint.

127 This defendant further answering states, that the said cause has been heard and determined in the Supreme Court of the United States, and that the Supreme Court of the United States passed upon the question of the impairment of contract set up by said bill of complaint therein and set up herein by the complainant, and that the Supreme Court of the United States affirmed the judgment of the Circuit Court of the United States and found that the defendant company had no such contract as was claimed in said bill of complaint and as is claimed herein.

And this defendant states and so charges the fact to be, that the final decree entered in this court in said cause, and the finding and judgment in the Supreme Court of the United States in said cause, constitutes *res adjudicata* upon the claim of said defendant company and of the complainant, that the defendant company had a contract whereby the defendant company had the right to charge one dollar per thousand feet of gas.

This defendant further answering states, that it has no knowledge or information except as shown in said bill, as to whether or not on the 16th day of December, 1902, said complainant addressed a certain communication to the board of directors of said de-
128 fendant company making certain requests, or as to whether or not the said defendant company refused and still refuses to carry out the requests of said complainant, or as to whether complainant made requests to the meeting of stockholders of the said defendant company, or as to whether or not the meeting of stockholders refused to carry out the requests of the said complainant, or as to whether or not the stockholders and directors passed certain resolutions as set out in said bill of complaint, or as to whether or not the said complainant is unable to procure the institution or prosecution of this suit or of any other suit in the name of the defendant company, and therefore this defendant neither admits nor denies the allegations in such behalf in said bill of complaint contained, but calls for full proof thereof if deemed material.

But this defendant further answering denies that this bill is not a collusive one, but this defendant states and so charges the fact to be, that the same points and claims set up by the complainant in this bill were set up by the defendant company in its bill already mentioned, and the claims and the same points were raised and made in this court and in the Supreme Court of the United States on the preceding hearing, and in the Supreme Court of the United States by the same counsel; and this defendant states and so charges
129 the fact to be, that this court and the Supreme Court, having refused to take jurisdiction of the question of the power of the city under the bill so filed by the defendant company, this complainant, as a stockholder of the said Peoples Gas Light & Coke Company, cannot file a bill setting up the same claims and pretences under the guise of having claims that are contested by the board of directors of his company.

This defendant shows that the directors of the Company are making the same claims that the complainant is, and that therefore, there is no *bona fide* dispute between the complainant and the directors of his company, but that on the contrary it is a collusive attempt to make this court take jurisdiction of a question over which it has already decided it has no jurisdiction.

This defendant further answering states, that the refusal of the board of directors to commence a suit in said court, if they have so refused, is not *bona fide*, and is collusive, and that the demand of the complainant and the refusal of the directors are a part of a scheme to secure the hearing of this cause of action in the United States courts, when the United States courts have already announced that they had no jurisdiction of the subject matter involved.

This defendant shows, that if this court has no jurisdiction of the question of the power of the city under the bill of the company, it cannot have jurisdiction of the same subject matter in a
130 bill by a stockholder in the defendant company when it is evident that the complainant is no more anxious to secure a decision of this court on the merits than the board of directors itself, and this defendant shows and so charges the fact to be that the pre-

tended dispute between the complainant and the directors is a mere scheme invented to enable the defendant to make a *prima facia case* of jurisdiction in this court, and is not in good faith and is therefore collusive.

This defendant further answering states, that the courts of the State of Illinois are open to the defendant company; that no prejudice or unfairness can be claimed or set up by the defendant company of the complainant against the courts of the State of Illinois; that this court has decided that it will not take jurisdiction of the subject matter of the bill so far as the power of the city is concerned, and all other questions raised by the bill are *res adjudicata*.

Therefore this defendant states and so charges the fact to be, that the pretended dispute between the complainant and the board of directors is a collusive scheme to force this court to take jurisdiction over the subject matter which it has already declined to consider.

This defendant further answering asks to have the same advantage of the matters and things set up in this answer as if the same
131 has been set up and maintained by way of demurrer, and as if this defendant had stood upon the said demurrer; and now, having answered the said bill of complaint, or as much thereof as this defendant is advised it is material or necessary for it to make answer unto, without this, that there is any other matter, cause or thing therein set out material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true, to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to maintain and prove, as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE CITY OF CHICAGO,
By GRANVILLE W. BROWNING,
Its Solicitor.

EDGAR B. TOLMAN,
Corporation Counsel, of Counsel.

(Endorsed:) Filed May 11th, 1904. Marshall E. Sampsell, Clerk.

132 And on to-wit: the third day of June, 1904, being one of the days of the regular December term of said Court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, District Judge, appears the following entry to-wit:

Order of June 3, 1904.

26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO and PEOPLES GAS LIGHT & COKE COMPANY.

On motion of Henry W. Wales, Jr., local solicitor for complainant, and on stipulation this day filed, It is Ordered by the Court that the time for filing the replication of complainant to the answer of the City of Chicago in the above entitled cause be and the same is hereby extended until July 5, 1904, without prejudice to any of the rights of the complainant.

133 And on to-wit: the second day of July, 1904, came the complainant in said entitled cause by his solicitors and filed in the clerk's office of said Court his certain Replication in words and figures following to-wit:

Replication.

Circuit Court of the United States for the Northern District of Illinois—Northern Division.

In Equity. No. 26,796.

DARIUS O. MILLS, Complainant,
against
CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

The Replication of the Above Named Complainant to the Answer of the Above Named Defendant City of Chicago.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant City of Chicago, for replication thereunto says that he does and will aver, maintain and prove the said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable

Court shall direct, and humbly—as in and by his said bill he
134 has already prayed.

GUTHRIE, CRAVATH & HENDERSON,
Solicitors for Complainant,
52 *William Street, New York, N. Y.*
HENRY W. WALES, Jr.,
Local Solicitor for Complainant,
633 *Monadnock Block, Chicago, Ill.*

(Endorsed:) Filed July 2, 1904, Marshall E. Sampsell, Clerk.

135 And on to-wit: the first day of February, 1905, being one of the days of the regular December term of said Court, 1904 in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of February 1, 1905.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT & COKE COMPANY.

On reading and filing the notice of motion on behalf of the complainant in the above entitled cause for leave to withdraw his replication and file an amended bill of complaint in said cause, and proof of service thereof, and the affidavit of Darius O. Mills, said complainant sworn to January 26, 1905, in support of said motion, and on reading the said proposed amended Bill of Complaint, verified January 26, 1905, and after hearing Granville W. Browning, solicitor for the City of Chicago and Messrs. Sears, Meagher & Whitney, solicitors for the Peoples' Gas Light and Coke Company.

Now, on motion of Henry W. Wales, Jr., one of the solicitors for the complainant it is,

Ordered, That the complainant be and he is hereby granted leave and permitted to withdraw his said replication and to file his said amended bill of complaint, and that each of the defendants have ten days from this date within which to demur, plead or answer as they may be advised.

136 And it appearing to the Court that the complainant is entitled to an injunction, as prayed for in his said amended bill of complaint, against the enforcement of the ordinance passed by the City Council of Chicago October 15th, 1900, compulsorily regulating the price of gas, because said City Council was without power to pass such ordinance. It is on like motion, hereby further

Ordered, adjudged and decreed that a writ of injunction issue out of and under the seal of this Court directed to the City of Chicago,

officers, agents, servants and employés, and any and every person acting under and by virtue of the authority of said ordinance, restraining and enjoining them and each of them from in any way enforcing or attempting to enforce said ordinance or any of the provisions thereof against The Peoples' Gas Light and Coke Company, and directed to The Peoples' Gas Light and Coke Company, its officers, servants, agents, and employés, restraining and enjoining them and each of them from accepting or complying with said ordinance, or any of the provisions thereof, and from submitting thereto until the further order of the Court.

And it is further ordered that the complainant herein within ten days from this date file a bond with good and sufficient surety in the sum of two hundred thousand dollars.

137 And on to-wit: the first day of February, 1905, came the complainant in said entitled cause by his solicitors and by leave of Court first had and obtained filed in the clerk's office of said Court his certain Amended Bill of Complaint in words and figures following to-wit:

137½ Circuit Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 26796.

DARIUS O. MILLS, Complainant,

vs.

THE CITY OF CHICAGO and THE PEOPLE'S GAS LIGHT AND COKE COMPANY, Defendants.

Amended Bill of Complaint.

Guthrie, Cravath & Henderson, Solicitors for Complainant, 52 William Street, New York, N. Y.

Henry W. Wales, Jr., Solicitor for Complainant, 633 Monadnock Block, Chicago, Ill.

William D. Guthrie, Of counsel.

138 Circuit Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 26,796.

DARIUS O. MILLS, Complainant,

versus

THE CITY OF CHICAGO and THE PEOPLE'S GAS LIGHT AND COKE COMPANY, Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Illinois, Northern Division:

Darius O. Mills, who is a resident and citizen of the State of New York, by leave of the court first had and obtained, brings this his

amended bill of complaint, in behalf of himself and all other stockholders of The People's Gas Light and Coke Company who are similarly situated and who may be entitled to avail themselves of the benefits of this suit, against the City of Chicago, a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, and situate in the northern division of the northern district of said State, and said The People's Gas Light and Coke Company, a corporation organized and existing under and by virtue of the laws of the
139 State of Illinois, and a citizen of the State of Illinois, situate and having its principal office and place of business in the northern division of the northern district of said State.

And thereupon your orator complains and shows as follows, viz.:

I.

Your orator avers that the defendant above-named, The People's Gas Light and Coke Company, hereinafter called "the defendant gas company," is a corporation duly organized and existing under and by virtue of a special act of the legislature of the State of Illinois, approved February 12, 1855, as amended by a public act of the legislature of said State, approved February 7, 1865, in and by which acts the State of Illinois granted to the defendant gas company, in perpetuity, the right to exist as a corporation for the manufacture, sale and distribution of gas in the City of Chicago, and, with the consent of the Common Council of the City of Chicago, to erect, maintain and use all necessary works, apparatus, mains and pipes for supplying gas to the City of Chicago and its inhabitants, to make all necessary use of any of the streets, alleys, avenues or public squares of said city, and to borrow money and to mortgage or lease any of its property or franchises, and with power to adopt such by-laws, rules and regulations for the government of the corporation and the management of its affairs and business as it may think proper, not inconsistent with the laws of the State, as will more fully and at large appear by reference to said acts, of which true copies are hereto annexed as Exhibits A and B, respectively, and made a part hereof.

140 II.

Your orator further avers that after the passage of said act of February 12, 1855, and said amendatory act of February 7, 1865, the defendant gas company acted upon the privileges and powers therein granted, and duly accepted the same, and, in reliance thereon and with the consent of the City of Chicago, constructed and erected gas works and laid pipes in said city for the distribution and delivery of gas to consumers thereof in said city and to said city, as hereinafter specified. The said consent of the City of Chicago was expressed in and by a certain ordinance adopted by the Common Council of said city on August 30, 1858, in the words and figures following, to wit:

"Be it ordained by the Common Council of the City of Chicago:

SECTION 1. That permission and authority be, and the same are

hereby granted to the People's Gas Light and Coke Company, of the City of Chicago, and State of Illinois, to lay their gas mains, pipes, feeders and service pipes in any of the streets, avenues, highways, public parks or squares throughout said city subject at all times, however, to the resolutions and ordinances of the common council of said city; *Provided,* that said Company when they shall open the ground to lay any pipe, or for any other purposes whatever, they shall restore the streets, pavements and sidewalks to a condition satisfactory to the city superintendent, with all convenient dispatch, and no more of any street or alley shall be opened or encumbered at any one time or in any one place, nor shall any street or alley be suffered to remain open or encumbered for a longer period than shall be strictly necessary to enable said Company to proceed with their work; and said Company shall be liable for all damages which may result from, or by reason of, opening or encumbering any street, alley or sidewalk in said City of Chicago, and *provided further,* that whenever said Company shall desire to lay their pipe, or do other work in any of the principal streets of said city, before they
141 commence doing so they shall consult the mayor or city superintendent of public works, and unless the mayor or superintendent consent to such work being done at the particular time, they shall not proceed with such work on any such principal street, without the express permission of the common council of the said City of Chicago; and *Provided further,* that nothing herein contained shall be construed to conflict with any rights or privileges heretofore given by the common council to the Chicago Gas Light and Coke Company, or in conflict with the provisions contained in the act of incorporation of The People's Gas Light and Coke Company, to first obtain the consent of the Chicago Gas Light and Coke Company, if pipes are laid previous to February 12, A. D. 1859."

III.

Your orator further avers that, in pursuance of the privileges and powers granted in and by said charter, and in carrying out and performing the duties and obligations imposed by said charter, the defendant gas company has invested many millions of dollars in erecting and constructing gas works, plants and appliances, and in laying down pipes, mains, feeders and appurtenances, to enable it to carry on the business of manufacturing and furnishing gas to consumers thereof throughout the City of Chicago; and that it has continuously for over forty years last past remained and is now engaged in the business of manufacturing, selling and distributing said gas by means of mains, pipes, feeders and appliances laid in the streets of said city.

Your orator further avers that the defendant gas company has invested its capital and funds in the development of its business in the City of Chicago in real estate in said city to the value of upwards of ten million dollars, and personal property in said city to the value of upwards of ten million dollars; that it has many build-
142 ings, factories, retorts, plants and apparatus for the manufacture, sale and distribution of gas in the City of Chicago, and in all parts and divisions thereof; that it owns, maintains and

operates upwards of seventeen hundred miles of pipes and mains laid in the streets, alleys, avenues, highways and public squares of said city; and that it has over three hundred thousand customers in said city.

Your orator further avers that the defendant gas company has now and since prior to January 1, 1900, has had an authorized capital stock of thirty-five million dollars ($35,000,000), divided into three hundred and fifty thousand (350,000) shares of the par value of one hundred dollars ($100) each, of which thirty-two million nine hundred and sixty-nine thousand one hundred dollars ($32,969,100) par value is now issued and outstanding in the hands of *bona fide* holders for value; and that it has issued or assumed and there are now outstanding thirty-four million four hundred and ninety-six thousand dollars ($34,496,000), face value, of mortgage bonds for which it is liable.

Your orator further avers that prior to the first day of January, 1898, he became the owner and registered holder of more than ten thousand of said shares of the capital stock of the defendant gas company, and ever since has been and now is the owner and registered holder of said shares aggregating that amount, and that he also owns and holds a large amount of the mortgage bonds of said company.

IV.

Your orator further avers that for some years prior to the amendment of the defendant gas company's charter by the said
143 act of February 7, 1865, and for several years thereafter, the rate duly charged by it for gas to consumers thereof in the City of Chicago was the net rate of $3.75 per thousand cubic feet; that it has from time to time decreased said rates, and that since prior to January 1, 1896, the price charged for illuminating gas manufactured and sold by it in said city to the residents thereof and to said city has been and now is the net rate of one dollar per thousand cubic feet.

Your orator further shows that the City of Chicago itself is, and for many years last past has been, a customer of the defendant gas company, in the same sense and in the same way and under the same conditions as each and every other customer in said city, and that its bills as a consumer of the gas manufactured and sold by the defendant during the year 1899, amounted to upwards of five hundred and fifty thousand dollars ($550,000), and during the year 1900 amounted to upwards of four hundred and ninety thousand dollars ($490,000).

V.

Your orator further avers that heretofore and on or about the 15th day of October, 1900, the City Council of the City of Chicago, purporting to represent said city, passed and adopted a certain ordinance, in the words and figures following, to wit:

Be it ordained by the City Council of the City of Chicago:

SEC. 1. That no corporation, company or companies, firm or

persons manufacturing, selling, supplying or distributing gas in the City of Chicago for illuminating or for fuel purposes shall charge, exact, demand or collect from any consumer thereof more than the sum of seventy-five (75) cents per one thousand (1,000) cubic feet of gas consumed or used. Said sum of seventy-five (75)
144 cents per one thousand (1,000) cubic feet of gas shall be the net price charged, exacted, demanded or collected from each consumer. Manufactured gas so furnished shall afford a light of not less than twenty (20) candle power, to be measured and ascertained at the place of consumption in said city by the most modern appliances known to science for measuring the candle power of illuminating gas.

Provided, however, that any corporation, company or companies, firm or person, distributing or selling gas for fuel or illuminating purposes in the City of Chicago may, in addition to said seventy-five (75) cents per one thousand cubic feet of gas furnished to such consumer, add a penalty of not exceeding ten (10) cents for each one thousand (1,000) cubic feet of gas so supplied to such consumer for delinquency or non-payment of the bill, statement or charge of said corporation, company or companies, firm or person after ten days from the date at which said bill, statement or charge is made and furnished to such consumer.

SEC. 2. That any company, corporation, person or persons who shall remove any meter or meters from the house, store, factory or premises of any consumer of gas in the City of Chicago, against the will and consent of any such consumer of gas who is willing to pay for gas furnished him, it or them by any such company, corporation, person or persons, and tenders the amount due at the price established and fixed in section 1 of this ordinance, shall be subject to a penalty of not less than twenty-five ($25) nor more than two hundred ($200) dollars for each and every offense; *Provided, however,* that any company, corporation, person or persons furnishing gas to consumers in the City of Chicago shall have the right to remove any meter or meters for the purpose of repairing the same, on condition that such meter or meters so removed shall be replaced or a new one substituted in its place within twenty-four (24) hours of the time of the removal of any such meter or meters.

SEC. 3. That any company, corporation, person or persons who shall, in violation of the provisions of the preceding sections, charge or require the City of Chicago, or any citizen thereof, or any consumer of gas therein, to pay for gas furnished to it or them, or either of them, a sum in excess of seventy-five (75) cents per
145 thousand cubic feet, or who shall furnish to the said city of Chicago, or any citizen thereof, manufactured gas less than twenty (20) candle power shall be subject to a penalty of not less than twenty-five dollars ($25), nor more than two hundred dollars ($200) for each and every offense.

SEC. 4. This ordinance shall be in full force and effect from and after the 2d day of January, A. D. 1901; *Provided,* that said ordinance shall not go into effect until it has been duly published, as provided by law.

And that said ordinance was not afterwards vetoed, repealed, modified or amended, and remains in effect as an ordinance of the City Council of said City of Chicago.

VI.

Your orator further shows that he is advised by counsel and verily believes, and therefore avers and claims, that the legislature of the State of Illinois has not at any time authorized or empowered the City Council of the City of Chicago to fix or regulate the prices to be charged by the defendant gas company or any other manufacturer for gas furnished, supplied or sold by it, or them, as in said ordinance attempted, that said ordinance was passed without authority under the laws of the State of Illinois, and that it is in all things null and void and of no force and effect.

VII.

Your orator further avers that the defendant City of Chicago has repeatedly announced and threatened that it will proceed to enforce the said ordinance against the defendant gas company in the event of any violation of the terms thereof by it; that it
146 intends and threatens so to do unless restrained by this court, and that numerous citizens of the City of Chicago have refused to pay for gas except as in said ordinance provided and have threatened that in the event of the failure of said defendant gas company to comply with the terms of said ordinance so passed by the said City Council as aforesaid, they will immediately take steps to enforce against the defendant gas company the penalties provided in said ordinance.

VIII.

Your orator further avers and shows that the defendant gas company has now upwards of three hundred thousand customers in the City of Chicago, as aforesaid, in addition to the said city itself, to whom it is daily selling and distributing gas and on the date of the passage of said ordinance was engaged in selling and distributing gas, and that during the years 1900, 1901 and 1902, it sold and delivered to such customers, at the net rate of one dollar per thousand cubic feet, an enormous amount of gas in each year, aggregating many hundred millions of cubic feet per annum.

Your orator further avers and shows that many of the defendant gas company's said customers are people of small means and are financially irresponsible, that it renders to each of its customers monthly statements for gas consumed by them during the preceding month, and collects therefor within a short time thereafter, that, unless said bills are promptly paid, it discontinues the supply of gas to such customers, that such method is the only one by which it is enabled to avoid great loss, by reason of the failure or inability of many of said customers to pay the bills for the gas con-
147 sumed by them, that if, pending the judicial determination of its validity, said ordinance should nevertheless be enforced

or if the City of Chicago should nevertheless be permitted to begin prosecutions against the defendant gas company for failure to comply with the terms of said ordinance, a large number of customers would decline to pay the price fixed by it as aforesaid, and would refuse to pay anything whatsoever over and above the sum fixed by the said city in said ordinance, that if said defendant gas company should attempt to remove the meters in the houses of such consumers or should attempt to discontinue the supply of gas to them, it would immediately be subjected to thousands of prosecutions on the part of said city, that if the defendant gas company should permit the bills of said customers to run until the final determination of such suit or suits as the city authorities might bring for failure to comply with the terms of the ordinance aforesaid, the outstanding bills due and payable to the defendant gas company would aggregate many million dollars, the exact amount of which your orator is at present unable to calculate, that by reason of the financial irresponsibility of a large number of said customers, the defendant gas company, in the event that it finally succeeds in defeating the said prosecutions, would be unable to collect from such customers the amount of such outstanding indebtedness; and that thereby the defendant gas company would suffer loss aggregating many million dollars, the exact amount of which your orator is unable to calculate, and which it is impossible to calculate, and the damage to the defend-
148 ant gas company and to your orator would be irreparable.

IX.

Your orator further avers and shows that the necessary operation of said ordinance of October 15, 1900, will be to reduce the amount of the gross receipts of the defendant gas company one-fourth of the present amount, and its net profits more than one-half, that the defendant gas company and its stockholders will thereby suffer irreparable loss for each day's enforcement of said ordinance in excess of five thousand dollars ($5,000) per day, that the penalties in said ordinance were and are calculated to coerce the defendant company and its officers to acquiesce therein, that a refusal or failure to observe and comply with said ordinance, if only for the purpose of having the question tested in good faith in a court of law, would involve the risk of absolute ruin of the defendant gas company, for the reason that the company has over three hundred thousand (300,000) customers in the City of Chicago, as aforesaid, and that the ordinance imposes "a penalty of not less than twenty-five dollars ($25), nor more than two hundred dollars ($200) for each and every offense," in other words, imposes possible penalties ranging from seven million five hundred thousand dollars ($7,500,000) to sixty million dollars ($60,000,000) for each day's violation of the ordinance dependent solely upon the discretion of magistrates in the City of Chicago, each and every one of whom, as your orator is informed and verily believes, is a consumer of gas and a customer of the defendant gas company. Your orator is advised by counsel
149 and, therefore, avers and claims that there is no remedy except in equity to adequately or completely test the validity of

said ordinance, and to protect the property rights of the defendant gas company from unlawful interference by the city authorities under the aforesaid void ordinance.

X.

Your orator further shows that heretofore and on or about the 31st day of December, 1900, the defendant gas company began a suit in equity in this honorable court against the City of Chicago wherein and whereby it was, among other things, prayed that an injunction issue restraining the City of Chicago from enforcing said ordinance of October 15, 1900, upon the ground that the same constituted an impairment of the obligation of said company's charter contract, that thereupon a writ of temporary injunction was issued against the said City of Chicago restraining it from enforcing said ordinance during the pendency of said action, that the defendant City of Chicago demurred to said bill, that thereafter said bill was amended and said defendant City demurred to the amended bill, that thereupon such proceedings were had in said cause on the hearing of the issue of law raised by said demurrer that a final decree was entered on the 30th day of July, 1902, dismissing the amended bill of complaint of said The People's Gas Light and Coke Company for want of jurisdiction in this court over the cause of action in said amended bill of complaint set forth, that an appeal was allowed in said suit to the Supreme Court of the United States, and pending said appeal this court continued the preliminary injunction so issued as
150 aforesaid, that thereafter and on the 5th day of December, 1903, this court by consent of the solicitors and counsel of both parties, made and entered an order and decree amending said decree of July 30, 1902, *nunc pro tunc*, so as to state the true decision of the court, by striking therefrom after the word "dismissed" the words "for want of jurisdiction," and inserting in lieu thereof the words "upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the City Council under the laws of the State of Illinois"; that on the 9th day of December, 1903, the Supreme Court of the United States allowed a writ of certiorari to this Court to correct the record on appeal in said cause in accordance with said order of this court of December 5, 1903, and that thereafter such proceedings were had in said cause in the Supreme Court that the said court, upon consideration of the said appeal of the defendant gas company, on the 4th day of April, 1904, in all things affirmed the said decree of this court of July 30, 1902, as amended December 5, 1903, *nunc pro tunc*.

XI.

Your orator further avers and shows that this suit is not collusive in order to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

Your orator avers and shows that on the 16th day of December, 1902, he addressed a communication to the board of directors
151 of the defendant gas company requesting them to institute and prosecute this suit in the name of the corporation, caused

said communication to be presented to said board of directors at a regular meeting thereof, and requested and demanded that said board institute this suit, but said board refused and still refuses so to do; and that thereupon your orator made similar application to the stockholders and requested and demanded that they direct the institution and prosecution of this suit, and presented to said stockholders in regular annual meeting assembled on February 10, 1903, a resolution reciting his said letter to the board of directors and its said refusal to institute suit and directing the institution of this suit, but said stockholders voted to reject said resolution and refused and still refuse to direct the institution of this suit; and your orator is, therefore, unable to procure the institution or prosecution of this suit in the name of the defendant gas company. A true copy of said letter is hereto attached as Exhibit C, and is made a part hereof.

XII.

To the end, therefore, that your orator may have that relief which he can only obtain in a court of equity, and that the said defendants may each answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by your orator, he now prays:

1. That it be adjudged and decreed that said ordinance of the City of Chicago of October 15, 1900, is illegal and void because enacted without valid legal authority.

152 2. That it be adjudged and decreed that your orator has no plain, adequate or complete remedy at law for the injury which would result from the threatened enforcement of said ordinance, and that said injury would be irreparable.

3. That it be adjudged and decreed that you orator be granted a writ of injunction, issuing out of and under the seal of this Honorable Court, against the defendant City of Chicago, restraining and enjoining said municipal corporation, its officers, agents, servants and employees, and any and every person acting under and by virtue of the authority of said ordinance from in any way enforcing or attempting to enforce said ordinance or any of the provisions thereof against The People's Gas Light and Coke Company, and also against the defendant The People's Gas Light and Coke Company restraining and enjoining it, its officers, servants, agents and employees from complying with the aforesaid ordinance of October 15, 1900, or any of the provisions thereof, and from submitting thereto, and from reducing the price of gas to seventy-five cents per thousand cubic feet under compulsion thereof.

Your orator further prays that if, at any time hereafter and prior to the final hearing hereof, any consumers of gas or other customer of the defendant gas company or other person in the City of Chicago shall attempt to enforce the provisions of said ordinance or otherwise act or proceed thereunder, such persons be made parties defendant hereto and each of them be enjoined and restrained as heretofore prayed; and that your orator have such other or further or different

order or relief as to the court may seem meet and the nature
153 of the case may require.

And your orator will ever pray, &c.

DARIUS O. MILLS.

GUTHRIE, CRAVATH & HENDERSON,
Solicitors for Complainant,
52 William Street, New York, N. Y.

GUTHRIE, CRAVATH & HENDERSON.

HENRY W. WALES, JR.,
Solicitor for Complainant,
633 Monadnock Block, Chicago, Ill.

WILLIAM D. GUTHRIE.

WILLIAM D. GUTHRIE,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York,
City and County of New York, ss:

Darius O. Mills, being duly sworn, on oath deposes and says that he is the complainant named in the foregoing amended bill of complaint and who has subscribed to the same; that he has read such amended bill and knows the contents thereof; that the matters therein set forth are true of his own knowledge, except as to those averred on information and belief, and that as to those matters, he verily believes it to be true.

DARIUS O. MILLS.

Subscribed and sworn to before me this 26th day of January, A. D. 1905.

[SEAL.]

JAMES L. MOCK,
Notary Public, Kings County, N. Y.

Certificate filed in New York County.

154 EXHIBIT A.

An Act to Incorporate The People's Gas Light and Coke Company.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That Matthew Laflin, L. C. Paine Freer, A. G. Throop, D. A. Gage, Jno. S. Wallace, Geo. W. Snow, H. B. Bay and R. H. Foss and their associates be and they are hereby created a body politic and corporate, with perpetual succession, by the name and style of "The People's Gas Light and Coke Company," and by that name they and their successors shall be capable in law of contracting and being contracted with, suing

and being sued, defending and being defended in all courts and places and in all matters and places whatsoever, with full powers to acquire, hold, occupy and enjoy all such real and personal estate as may be necessary and proper for the construction, extension and usefulness of the works of said Company, and for the management and good government of the same; and they may have a common seal, and the same may alter, break and renew at pleasure

§ 2. The corporation hereby created shall have full power and authority, forthwith upon their due organization under this act, to proceed to the erection of the necessary works for the manufacture of gas and coke, within said City of Chicago, and on and after the 12th day of February, A. D. 1859, to manufacture and sell gas, to be made from any or all the substances or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of lighting the City of Chicago or the streets thereof and any buildings, manufactories, public places or houses therein contained, and to erect all necessary works and apparatus as aforesaid; and on and after the said 12th day of February, 1859, or sooner by and with the consent of the Chicago Gas Light and Coke Company, to lay pipes for the purpose of conducting the gas in any of the streets or avenues of said city, with the consent of the City Council: *Provided*, that no permanent injury or damage shall be done to any street, lane or highway in said city. The real estate which this corporation is entitled to hold shall not exceed in value $100,000.

§ 3. The capital stock of said Company shall not exceed
155 $500,000, to be subscribed for and paid in such proportions as shall be prescribed by the by-laws and rules for regulating the concerns of said Company as they shall think proper and necessary respecting the management and disposition of the stock, property and estate of said Company, the duties of the officers and agents to be employed, the number and election of directors, and all such matters as appertain to the concerns of said Company.

§ 4. It is an express provision of the foregoing act of incorporation that the said Company shall furnish and supply to the City of Chicago, for all its public uses, at the election of the proper authorities of said city, a sufficient supply of gas, at a rate not exceeding $2 per thousand feet; and the inhabitants of said city, at a rate not exceeding $2.50 per thousand feet.

Exhibit B.

An Act to Amend an Act Entitled "An Act to Incorporate the People's Gas Light and Coke Company," Approved February 12, 1855.

Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the second section of said act be and the same is hereby so amended as to read as follows, viz.: The corporation hereby created shall have full power and authority forthwith to proceed to the erection and maintenance of the neces-

sary works for the manufacture of gas and coke within said City of Chicago, and to manufacture, supply and sell gas, to be made from any and all substances or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of lighting the City of Chicago, any streets, buildings, manufactories, public places or houses therein contained, and to erect and use all necessary works and apparatus for such purposes aforesaid, and with the consent of the Common Council of said City, to lay down and use all necessary pipes for the conducting of gas in and along any of the streets, alleys, avenues or public squares of said City: *Provided*, that no permanent injury or damage shall be done to any such street, alley, avenue or public square by the laying down of any such pipes.

156 § 2. That section three of the said act be and the same is hereby so amended as to read as follows, viz.: The capital stock of said Company shall be five hundred thousand dollars, and may be increased from time to time, at the pleasure of said corporation; it may be divided into such shares, subscribed for, paid and transferred in such proportions and manner as shall be prescribed by the by-laws and regulations of said Company.

§ 3. All the corporate powers of said corporation shall be vested in and exercised by a Board of Directors, and such officers and agents as said board shall appoint. The Board of Directors shall consist of not less than three nor more than five stockholders, who shall be chosen by the stockholders at such time and in such manner as the said corporation shall by its by-laws prescribe, and shall hold their office until their successors are elected and qualified, and may fill any vacancies which may happen in the Board of Directors by death, resignation or otherwise; they may adopt such by-laws, rules and regulations for the government of said corporation and the management of its affairs and business as they may think proper, not inconsistent with the laws of this State, and the fourth section of said act is hereby repealed; but ten years after the passage of this act the Common Council of the City of Chicago may, by resolution or ordinance, regulate the prices charged by said Company for gas; but said Common Council of the City of Chicago shall, in no case, be authorized to compel the said Company to furnish gas at a less rate than three dollars per thousand feet.

§ 4. The said corporation is hereby authorized to borrow money and to mortgage or lease any of its property or franchises.

§ 5. This act shall be deemed a public act, and noticed as such by all courts without pleading, and take effect from and after its passage.

157 EXHIBIT C.

NEW YORK, *December* 16, 1902.

To the Board of Directors of the Peoples Gas Light & Coke Company.

DEAR SIRS: I believe that you are aware that I am, and for upwards of five years last past have been, the largest stockholder of the Peoples Gas Light & Coke Company, and of course, as such stock-

holder, I am vitally interested in the questions which have arisen under the ordinance of the Common Council of the City of Chicago reducing the price to be charged for illuminating and fuel gas to 75¢ per thousand cubic feet.

I have caused to be submitted to my counsel the proceedings in the suit instituted in the Circuit Court of the United States at Chicago for the purpose of restraining the enforcement of this ordinance, on the ground that it constituted an impairment of the obligation of the contract contained in our charter, together with a copy of the opinions of Judge Grosscup, and have informed such counsel that the case has been appealed to the Supreme Court of the United States and will probably not be reached for argument until some time during the year 1904.

I am advised by counsel that the interests of the Peoples Gas Light & Coke Company may not be adequately protected by the pending litigation for the following reasons:

FIRST.—That the bill in the pending suit was dismissed for want of jurisdiction in the Circuit Court of the United States for the Northern District of Illinois, and that in view of such disposition the Supreme Court of the United States may limit the point which it will consider on the present appeal to the naked question of jurisdiction.

SECONDLY.—That the present suit does not involve any question as to the power of the Common Council of the City of Chicago to reduce the charges of our Company.

In view of the vital interest to all stockholders of these questions, I hereby request that you will cause to be instituted at the earliest practicable moment a new suit against the City of Chicago or
158 otherwise, for the purpose of preventing the enforcement of this ordinance upon the ground that it impairs our charter contract and that the Common Council had no power to pass it. The facts stated in the amended bill of complaint in the pending suit I am advised fully show the necessity for a resort to equity for the protection of our rights.

It seems to me that the importance of this matter to the Company and its stockholders cannot be exaggerated. If the ordinance is valid, the revenue of the Company will be decreased one-quarter of the present gross income and very much more than this of the net income.

Yours very truly,
(Signed) D. O. MILLS.

(Endorsed:) Filed Feb. 1, 1905. Marshall E. Sampsell, Clerk.

159 And on to-wit: the first day of February, 1905, there was filed in the clerk's office of said Court in said entitled cause a certain affidavit made by Darius O. Mills. Which said Affidavit is in the words and figures following to-wit:

Affidavit of Darius O. Mills.

Circuit Court of the United States for the Northern District of Illinois, Northern Division. In Equity.

DARIUS O. MILLS, Complainant,
against
THE CITY OF CHICAGO and THE PEOPLE'S GAS LIGHT AND COKE COMPANY, Defendants.

Please take notice that on the 1st day of February, 1905, at 9:45 a. m., at the United States Circuit Court room in the City of Chicago in said district, the complainant above named, by his solicitors, will move the court for an order that he have leave to withdraw his replication and file his amended bill of complaint, copy of which is hereto annexed, and that a preliminary injunction issue on said amended bill to the same tenor, purport and effect as the injunction order entered herein on February 15, 1904, and that said applications will be made upon the record and files in said cause, upon the said proposed amended bill of complaint and upon the affidavit of Darius O. Mills, verified January 26, 1905, a copy of which is hereto annexed.

Dated January 26, 1905.

GUTHRIE, CRAVATH & HENDERSON,
52 William Street, New York City, N. Y.
HENRY W. WALES, JR.,
Solicitor for Complainant,
633 Monadnock Block, Chicago, Ill.

160 Accdpt service of above notice:
GRANVILLE W. BROWNING,
Sol. of City of Chicago.
SEARS, MEAGHER & WHITNEY,
Sol'rs for People's Gas Light & Coke Co.

To Messrs. Granville W. Browning, Solicitor for defendant City of Chicago, 140 Dearborn Street, Chicago, Ill. Sears, Meagher & Whitney, Solicitors for defendant The Peoples' Gas Light & Coke Company, Merchants Loan & Trust Co. Building, Chicago, Ill.

Circuit Court of the United States for the Northern District of Illinois, Northern Division. In Equity.

DARIUS O. MILLS, Complainant,
versus
THE CITY OF CHICAGO and THE PEOPLE'S GAS LIGHT AND COKE COMPANY, Defendants.

SOUTHERN DISTRICT OF NEW YORK,
City, County and State of New York, ss:

Darius O. Mills being duly sworn, deposes and says as follows:

I. I am the complainant in the above entitled cause. As appears by the original bill of complaint in said cause, this suit was brought to secure an injunction against the enforcement of the ordinance of the City Council of the City of Chicago, dated October 15, 1900, reducing the price of gas charged by the defendant Gas Company from one dollar per thousand cubic feet of gas to seventy-five (75) cents per thousand cubic feet, on the alleged ground that such ordinance constituted an impairment of the contract rights of the defendant People's Gas Light and Coke Company, and also on the ground that it was enacted without valid legal authority, and
162 was beyond the power of said City Council to pass, adopt or enact; and in said bill of complaint the case of The People's Gas Light and Coke Company against the City of Chicago was referred to as pending in the Supreme Court of the United States on the appeal of said company from a final decree of the Circuit Court of the United States for the Northern District of Illinois, dated July 30, 1902, wherein and whereby it was adjudged that the bill of complaint of said company be and it was thereby "dismissed for want of jurisdiction."

II. Since the filing of the bill of complaint by me in the above entitled cause, and on December 5, 1903, the said Circuit Court made and entered, by consent of all the parties in said suit, an order and decree amending the said decree of July 30, 1902, *nunc pro tunc*, so as to state the true decision of the court, by striking therefrom after the word "dismissed," the words, "for want of jurisdiction," and inserting in lieu thereof the words "upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois." Thereafter and on December 9, 1903, the said Supreme Court issued a writ of certiorari to said Circuit Court to correct the record on appeal in said cause of The People's Gas Light and Coke Company against the City of Chicago, and on April 4, 1904, said Supreme Court affirmed said decree of said Circuit Court of July 30, 1902, as amended December 5, 1903, *nunc pro tunc;* all of which facts more fully appear from the record and papers on file in said suit in the office of the clerk of this
163 court.

III. This affidavit is made in support of an application to

file an amended bill of complaint in the above entitled cause so as to correctly state the decree in the case of The People's Gas Light and Coke Company against the City of Chicago, as so amended *nunc pro tunc*, and, in view of the affirmance of said amended decree by the Supreme Court of the United States, to eliminate the alleged contract rights of said company from the complainant's bill of complaint and confine the claim in this suit to the alleged invalidity of said ordinance by reason of the alleged want of legal power and authority on the part of the City Council of the City of Chicago to pass, adopt or enact any such ordinance compulsorily regulating the price to be charged for gas sold by manufacturers in said city.

IV. Deponent further says that this application is not made for the purpose of vexation or delay, but for the purpose of speeding the hearing and determination of said cause and narrowing the issues and testimony by eliminating any claim to general or partial relief in respect of any alleged impairment of the defendant Gas Company's alleged contract rights.

DARIUS O. MILLS.

Sworn to before me this 26th day of January, 1905.
[SEAL.] JAMES L. HOCK,
Notary Public, Kings Co., N. Y.

Cer. filed in N. Y. Co.

(Endorsed:) Filed Feb. 1, 1905, Marshall E. Sampsell, Clerk.

164 And on to-wit: the eleventh day of February, 1905, there was filed in the clerk's office of said Court in said entitled cause a certain Injunction Bond in words and figures following to-wit:

Injunction Bond.

Know All Men by these Presents: That we, Darius O. Mills, as principal and Pacific Surety Company, as surety, are held and firmly bound unto the City of Chicago, in the sum of two hundred thousand dollars ($200,000.00), to be paid to the said City of Chicago, for which payment well and truly to be made, we bind ourselves, jointly and severally, and our respective heirs, executors and administrators and successors, firmly by these presents.

Sealed with our seals and dated this sixth day of February, A. D. 1905.

Whereas the above bounden Darius O. Mills has filed his bill of complaint in the Circuit Court of the United States for the Northern District of Illinois, against the above named City of Chicago, with others, praying, among other things, for an injunction against the City of Chicago, its officers, agents, servants and employees and any and every person acting under and by virtue of the authority of an ordinance passed by the City Council of the City of Chicago, on the 15th day of October, A. D. 1900, regulating the price of gas, restraining and enjoining them, and each of them, from in any way

enforcing or attempting to enforce said ordinance or any of the provisions thereof against The Peoples Gas Light & Coke Company;

And Whereas, said Court has allowed an injunction for that purpose, according to the prayer of said bill, upon the said Darius O. Mills, giving bond and security as provided by law.

165 Now, therefore, the condition of the above obligation is such, that if the above bounden Darius O. Mills, his executors or administrators, or any of them, shall and do well and truly pay, or cause to be paid to the said City of Chicago, all damages which may be sustained by the said defendant, or any one or more of them by reason of the wrongful issuing of such injunction, and also, all such costs and damages as shall be awarded against the said complainant in case the said injunction shall be dissolved; then the above obligation to be void; otherwise to be and remain in full force and virtue.

D. O. MILLS. [SEAL.]
[SEAL.] PACIFIC SURETY COMPANY, [SEAL.]
By STUART G. SHEPARD,
Resident Assistant Secretary.

Attest:
JOHN P. TUOMEY.
Attest:
LYMAN, OTIS & CO.,
General Agents.

Approved:
P. S. GROSSCUP, *Judge.*

O. K.
GRANVILLE W. BROWNING,
Sol'r of the City of Chicago.

SOUTHERN DISTRICT OF NEW YORK,
City, County & State of New York, ss:

On this 9th day of February 1905, before me personally came Darius O. Mills, to me known and known to me to be the individual described in the foregoing injunction bond, and he acknowledged to me that he executed it for the uses and purposes therein mentioned.

[SEAL.] JOHN P. TUOMEY,
Notary Public, Kings Co., N. Y.

Certificate Filed in New York County.

(Endorsed:) Filed Feb. 11, 1905, Marshall E. Sampsell, Clerk.

166 And on to-wit: the eleventh day of February, 1905, came the City of Chicago by its solicitor and filed in the clerk's office of said Court in said entitled cause its certain demurrer to the Amended Bill of Complaint in words and figures following to-wit:

Demurrer of City of Chicago to Amended Bill.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division:

In the Circuit Court of the United States for the Northern District of Illinois. In Equity.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

The Demurrer of the City of Chicago, One of the Defendants Above Named, to the Amended Bill of Complaint of Darius O. Mills, Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said Complainant's Amended Bill of Complaint contained, to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer, showeth that the said complainant has not in and by the said Amended Bill of Complaint made or stated any such cause as doth or ought to entitle him to any such discovery or relief as is thereby sought or prayed for from or
167 against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in said Amended Bill of Complaint, this defendant demurs thereto humbly demands the judgment of this court, whether it shall be compelled to make any other answer to the said Amended Bill, and prays to be hence dismissed, with its costs and charges in this behalf most wrongfully sustained.

GRANVILLE W. BROWNING,
Solicitor of the City of Chicago.

EDGAR B. TOLMAN,
Corporation Counsel, of Counsel.

NORTHERN DISTRICT OF ILLINOIS, *County of Cook, ss:*

Granville W. Browning, makes solemn oath and says: that he is Special Corporation Counsel and Agent for the City of Chicago, the above named defendant, in this behalf, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

GRANVILLE W. BROWNING.

Subscribed and sworn to before me this eleventh day of February A. D. 1905.

[SEAL.]

VIRGINIA GUEST,
Notary Public.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

GRANVILLE W. BROWNING.

(Endorsed:) Filed Feb. 11, 1905, Marshall E. Sampsell, Clerk.

168 And on to-wit: the first day of August, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of August 1, 1905.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY.

This cause coming on to be heard at this term, upon the demurrer of the defendant, The City of Chicago, to the amended bill of complaint herein, the defendant, The Peoples Gas Light and Coke Company having failed to plead; and upon the motion of the complainant for a temporary injunction, as prayed for in said amended bill; and it appearing to the court that the complainant on the face of the bill, the demurrer being overruled, is entitled to an injunction against the enforcement of the ordinance passed by the city council of Chicago, October 15th, 1900, because the council was without power to pass such ordinance;

169 It is ordered, after hearing Granville W. Browning and Henry M. Ashton, Esq-res, of counsel for the City of Chicago, in support of the demurrer to the amended bill and in opposition to the motion aforesaid, and William D. Guthrie, of counsel for the complainant in opposition to the demurrer, and in support of the motion aforesaid, and upon motion of Guthrie, Cravath and Henderson and Henry W. Wales, Jr., solicitors for complainant, that the said demurrer to the amended bill be, and the same is hereby, in all things overruled, that the complainant have judgment thereon; and that an injunction be entered as prayed for in the said amended bill, but with leave to the defendant, The City of Chicago to withdraw its said demurrer and answer the said bill within twenty days; and it is hereby further

Ordered, adjudged and decreed that a writ of injunction issue out of and under the seal of this court, directed to The City of Chicago, its officers, agents, servants and employés, and any and every person acting under and by virtue of the authority of said ordinance, restraining and enjoining them and each of them from in any way enforcing or attempting to enforce said ordinance, or any of the provisions thereof, against the Peoples Gas Light and Coke Company, and directed to The Peoples Gas Light and Coke Company,

its officers, servants, agents and employees, restraining and enjoining them and each of them from accepting or complying with said ordinance, or any of the provisions thereof, and from submitting thereto until the further order of the court.

170 And on to-wit: the nineteenth day of August, 1905, came the City of Chicago by its solicitors and filed in the clerk's office of said Court in said entitled cause its certain Answer to the Amended Bill of Complaint in words and figures following to-wit:

171 *Answer of City of Chicago to Amended Bill.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

DARIUS O. MILLS, Complainant,
vs.
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

The Separate Answer of The City of Chicago, One of the Above Named Defendants, to the Amended Bill of Complaint of Darius O. Mills, the Complainant Above Named.

This defendant, now and at all times hereafter saving and reserving unto itself all and all manner of benefit and advantage of exception or otherwise, which can or may be had or taken to the many errors, uncertainties, imperfections and other weaknesses in the said complainant's said amended Bill of Complaint contained, for answer unto the same or unto so much and such parts thereof as this defendant is advised it is necessary to make answer unto, answering, says:

That it has no knowledge or information other than from the averments of the said amended bill as to whether or not the
172 complainant therein, Darius O. Mills, is or is not a resident and citizen of the State of New York and, therefore, it neither admits or denies the allegations in this behalf, but calls for full proof thereof.

This defendant further answering, says, that if the said complainant is a citizen and resident of the State of New York, as he avers, nevertheless, he has no right under the laws of the United States to file his amended bill in this court, in the premises, the Circuit Court of the United States having no jurisdiction of the amended bill filed herein by said complainant, and this defendant asks that it may have the same advantage of the matter herein set out as if it had demurred to the same and stood upon the demurrer;

I. This defendant further answering, admits that the original Peoples Gas Light & Coke Company was a corporation duly organized and existing under and by virtue of a special act of the legis-

lature of the State of Illinois, approved February 12, 1855, and amended by special act of the legislature approved February 7, 1865, but denies that the present Peoples Gas Light & Coke Company, called in said amended bill, "The defendant gas company," is the same corporation, but states and so charges the fact to be, that the present corporation, the Peoples Gas Light & Coke Company, called in the said bill "the defendant gas company," is a consolidated Company and derives its existence, powers and duties under and by virtue of the fact that the original company and others hereinafter
173 named, voluntarily availed themselves of the provisions of an act of the legislature of the State of Illinois known as the Gas Consolidation Act, and hereinafter more particularly referred to, and under the provisions of the said Gas Consolidation Act, merged and consolidated themselves into the present corporation, claiming for the said consolidated company the name of the said original Peoples Gas Light & Coke Company; and this defendant denies that the present company is other than a consolidated company deriving its existence and powers under and by virtue of the said Gas Consolidation Act of 1897;

II. This defendant further answering, admits that the original Peoples Gas Light & Coke Company was incorporated by the act of February 12, 1855 and said amendatory act of February 7, 1865, as set out in said bill, but this defendant states and so charges the fact to be that the said original company could only act under its charter powers, after having obtained the consent of the City Council of the City of Chicago, and that the said City Council had the right to give such consent subject to such conditions and terms as it should see fit;

III. This defendant, further answering, admits that the amendatory act approved February 7, 1865, is correctly set out as an exhibit to the said amended bill, but this defendant states and so charges the fact to be, that any privileges and immunities that may have been granted or claimed to be granted by said Act, and amendatory Act of the legislature, to the original Peoples Gas Light & Coke Company, were lost and ceased to exist, if any there were, when the original Peoples Gas Light & Coke Company voluntarily entered into the merger under said act of 1897, which said merger,
174 under the last mentioned act, now exists as to defendant herein, the Consolidated Company, the Peoples Gas Light & Coke Company.

IV. This defendant further answering, admits that the original Peoples Gas Light & Coke Company accepted the said act of 1855, and said amendatory act of 1865, and in reliance thereupon and with the consent of the City of Chicago, constructed and erected gas works and laid pipes in portions of that part of the said City of Chicago known as the West town, for the distribution and delivery of gas to the consumers thereof in that part of said city.

This defendant further answering, denies that the said original Company ever laid its pipes or furnished gas to the citizens of Chicago, in that city, generally.

V. Further answering this defendant admits that the said consent of this defendant, required to be given under the said Acts of

1855, was expressed in and by the ordinance set out in the said amended bill, and passed by the City Council of this defendant City on August 30, A. D. 1858.

And this defendant states and so charges the fact to be that the said original Peoples Gas Light and Coke Company accepted the said ordinance and duly operated under the same until the date of its consolidation as hereinafter set out, and that under and by virtue of the conditions prescribed by the said consent ordinance, the said original Peoples Gas Light and Coke Company enjoyed the privileges and powers within the said city, subject at all times to
175 the resolutions and ordinances of the City Council of this defendant city, and that it was intended, among other things, in passing the said consent ordinance of 1858, to reserve to the City Council the right, at any time needful, to regulate within reasonable bounds, the prices at which the said company should sell gas within the limits of this defendant city, and that in fact such right was duly reserved and does in fact now exist in the City Council, by virtue of the terms of the said consent ordinance.

VI. This defendant, further answering, states and charges the fact to be that the said original Company accepted the said ordinance and laid its mains thereunder and proceeded to do business thereunder, and that therein and thereby the said provision reserving to the City Council the right of regulation, including the right of regulation of prices, became a contract between the City of Chicago and the said Company.

VII. And this defendant further answering, says and so charges the fact to be that this right of regulation by the City Council was never lost or interfered with when the said company voluntarily took advantage of the provisions of the said consolidation act of 1897.

VIII. This defendant further answering, admits that up to the date of the said consolidation under the said act of 1897, the said original Company invested money and constructed plants and appliances, laid down pipes and carried on the business of manufacturing and furnishing gas in certain parts of the City of Chicago, but this defendant denies that it laid mains or manufactured or furnished gas to consumers throughout the city of Chicago, but says that such furnishing of gas was limited to only a small part of the said city of Chicago, and this defendant denies that the said
176 original Company has continuously for more than forty (40) years last past remained in the business of manufacturing, selling and distributing gas in the said City, but states that said original Company ceased to so manufacture, furnish and distribute gas when it entered into the said merger, or consolidation, in or about the year 1898; and this defendant denies that said original Company is now engaged in the business of manufacturing, selling and distributing gas, but states that the said Company ceased to do business of any kind in or about the year 1898, and that since the said consolidation and merger hereinafter referred to, a consolidated company bearing the name of the Peoples Gas Light & Coke Company has continued to furnish gas, not only in the old

territory of the old Peoples Gas Light & Coke Company, but throughout the larger part of the City of Chicago.

IX. This defendant further answering, denies that the said original company had invested capital and funds up to the date of the filing of its bill of complaint, in real estate in said city, to the value of up to $10,000,000, but states that the said original company ceased investing money, or doing any other business upon its entry and merger into the consolidated company, and that any capital and funds invested in real estate in said city, by said original Company, has become the property of the said Consolidated Company, upon said merger, and this defendant neither admits nor denies that the real estate of the consolidated company had, before the date of the filing of the bill herein, amounted in value to upwards of $10,000,000. and calls for full proof thereof if deemed material.

X. This defendant further answering, denies that said original company has buildings, factories, stores, plants or any other apparatus or any other property in the City of Chicago, but says that all property originally belonging to said Company, now be-
177 longs to said consolidated company, and denies that said original company owns or maintains 1700 miles of pipe and mains, or any other pipes and mains in said City of Chicago, but states that all mains and pipes formerly belonging to said company, now belong to the consolidated company.

XI. This defendant further answering, admits that the consolidated company has an authorized capital stock of $35,000,000. but has no knowledge or information except by the allegations of said amended bill as to whether or not $32,969,100.00 is now issued and outstanding, or as to whether or not $34,496,000.00, face value, of mortgage bonds are outstanding, and therefore neither admits nor denies the allegations in said behalf, but calls for full proof thereof, if deemed material, but this defendant states that the said stock and bonds have nothing whatever to do with the said original company, but are the stock and bonds of the consolidated company aforesaid.

XII. This defendant further answering, says that it has no knowledge or information other than from the allegations of said amended bill, as to whether said complainant, prior to January 1st, 1898, became the owner of more than 10,000 shares of the capital stock of said company, or as to whether or not he is still such owner, or whether or not he owns and holds mortgage bonds of said company, therefore this defendant neither admits nor denies the allegations in said behalf, but calls for full proof thereof, if deemed material. This defendant states, however, that if the complainant is the owner of any stocks or bonds, they are the stocks and bonds of the consolidated company and not of the original company.

XIII. This defendant further answering, states that even if
178 it shall appear from the evidence that said complainant is the owner of stocks or bonds of the consolidated company, nevertheless the said facts give the complainant no right *the* to maintain his said amended bill of complaint or any herein, bill in this court. This court having no jurisdiction of the same.

XIV. This defendant further answering, says that it has no

information other than from said amended bill as to whether or not for several years the said original company charged to the consumers in Chicago, a net rate of $3.75 per 1000 feet in or before the year 1865 and thereafter, and therefore this defendant neither admits nor denies the allegations in said behalf, but calls for full proof thereof if deemed material.

XV. This defendant further answering, admits that since about January 1st, 1896, the original company charged one dollar net per thousand feet for its gas in the said city of Chicago, up to the time of the consolidation, but shows that any reductions in the price of gas made by the said original company were made because of competition and because of threatened regulation of prices from time to time by the City Council of this defendant.

XVI. And this defendant further answering, admits that the regular net rate usually charged by the said defendant company within the city since the consolidation has been $1.00 per thousand feet, but that at times less than $1.00 has been charged and received by it.

XVII. This defendant further answering, admits that for many years prior to the consolidation hereinafter set out, this de-
179 fendant was a customer of the original Company in certain parts of its territory, and that since the said consolidation the City of Chicago has been and now is a customer of the said Consolidated Company in a large part of this defendant's territory.

This defendant further answering, neither admits nor denies the allegations that the gas bills rendered to this defendant by the Consolidated Company in the year 1899 amounted to upwards of $550,000.00, and during the year 1900 amounted to upwards of $490,000.00, but calls for strict proof thereof, if deemed material.

XVIII. This defendant further answering, denies that any payments have been made by the city to the said Company since the merger and consolidation hereinafter set out.

XIX. This defendant further answering, admits that on the 15th. day of October 1900, the City Council passed the ordinance set out in said amended bill and that said ordinance is now and has been since its adoption, in full effect and a valid and legal ordinance of the city of Chicago.

XX. This defendant further answering, denies that the legislature of the State of Illinois has not at any time authorized the City Council of this defendant city to fix or regulate the price of gas to be charged by the defendant company within the city limits, but states and so charges the fact to be that the power and authority to enact said ordinance of October 15th, 1900, is given to the city of Chicago by the State of Illinois by the provisions of the charter granted to the original Peoples Gas Light & Coke Company
180 in the year 1865, as set out in said bill; that it further derives said power from the reservation contained in the ordinance given to the original Peoples Gas Light & Coke Company, August 30th, 1858, as set out in said bill, and that it further derives such power from the 13th and 66th subdivision- of section 1. Article 5, Chapter 24, of the revised statutes of the State of Illinois; and

this defendant states and so charges the fact to be, that the said ordinance of October 15, 1900 was passed with authority so derived from the State legislature, and is a valid and legal ordinance, in full force and effect.

XXI. This defendant further answering, admits that this defendant will enforce said ordinance against the defendant company and all other gas companies doing business within the city limits, so soon as the same can legally be done.

XXII. This defendant has no information or belief other than from said amended bill as to whether or not numerous citizens have refused to pay for gas except at the legal rate, or as to whether or not the defendant company could not enforce its rights at common law, and therefore, neither admits nor denies the allegations in such behalf, but calls for full proof thereof, if deemed material.

XXIII. This defendant states and so charges the fact to be, that the citizens of this defendant are entitled under the law to resist all attempts of the said defendant company to charge more than seventy-five cents a thousand feet for gas, and that in so doing they are only exercising their legal rights under and by virtue of the laws of the State of Illinois.

181 XXIV. This defendant has no information or belief other than from said amended bill as to whether or not the defendant company has now upwards of three hundred thousand customers in the city of Chicago, and therefore neither admits nor denies the allegations in such behalf, but calls for full proof of the same, if deemed material.

XXV. This defendant further answering, states that the complaints and allegations contained in clauses VIII and IX of the said bill, are merely the losses and sufferings which will come upon any person who declines to obey the laws and valid ordinances of the City of Chicago, and that the facts therein set out furnish no ground for the intervention of a court of equity.

This defendant states that if said company will obey and conform to the said ordinance of October 15th, 1900, without further attempts to delay the enforcement of the same, it will derive large and sufficient profits by charging the legal rate so fixed by said ordinance, and will escape the suits, fines and punishments set out and complained of in said clauses VIII and IX of the said amended Bill.

XXVI. This defendant further answering, admits that the enforcement of the said ordinance will reduce the amount of the gross receipts of the said defendant company, but denies that the company and its stockholders will suffer any loss for such enforcement which will be inequitable and unfair, but states that all moneys received by said defendant company over and above 75 cents per thousand feet, are inequitable, unfair, and exorbitant profits and such profits as no court of equity will permit to be exacted.

182 XXVII. This defendant further answering, denies that the refusal or failure to comply with the ordinance, if only for the purpose of having the question tested in good faith in a court of law, would involve the risk of absolute ruin of the defendant company, and states that as a matter of fact the defendant company

since January 1, 1901, has been assuming to test the legality and validity of said ordinance, and has carried litigation, testing the validity of said ordinance, to the Supreme Court of the United States, and this defendant further answering, states, that the said Supreme Court of the United States has determined all questions of which a United States Court has jurisdiction in their proceedings, in favor of the city of Chicago, and against the said defendant company.

XXVIII. This defendant further answering, says that such litigation, testing the validity of the said ordinance has not ruined the defendant company or caused it any illegal or irreparable loss, and this defendant further answering, denies that there is no remedy except in a court of equity to test the validity of said ordinance, and denies that the penalties suffered by the said company could in any way be confiscatory, or could cause the defendant company irreparable loss.

XXIX. This defendant further answering, admits that the defendant company began a suit in equity in the Circuit Court of the United States, for the Northern District of Illinois, against this defendant, and admits that one of the grounds set out in said bill was that the ordinance constituted an impairment of the obligation of the defendant's alleged charter contract.

183 XXX. But this defendant further answering, states that in addition to said ground of impairment of contract, said defendant company in its said bill also raised the question of the power of the City of Chicago to pass the ordinance of October 15th, 1900, and this defendant shows and so states the fact to be, that exactly the same questions were raised in the said bill, in the said cause, and were argued by counsel in the attempt of the said company to maintain the said bill, as were raised by the original Bill in the pending cause by the complainant.

XXXI. This defendant further answering, admits that a final decree was entered dismissing the bill of complaint of the said defendant company in terms dismissing said bill of complaint upon the express ground that there was no impairment of contract and that the said defendant company had no claim to the contract to charge one dollar as set up and claimed by its said bill of complaint and set up and claimed herein by the original bill of complaint.

XXXII. This defendant further answering, admits that the said cause was heard and determined in the Supreme Court of the United States, and that the Supreme Court of the United States passed upon the question of the impairment of contract set up by said bill of complaint therein and set up herein originally by the complainant, and that the Supreme Court of the United States affirmed the judgment of the Circuit Court of the Uinted States and found that the defendant company had no such contract as was claimed in said bill of complaint and as was originally claimed herein in the original Bill of Complaint.

184 XXXIII. This defendant further answering, denies that the said suit is not collusive in order to confer jurisdiction in a Court of the United States as alleged in said amended bill of complaint, but to the contrary this defendant states and charges the fact to be that said suit is collusive, to-wit: That said suit is brought

in pursuance of a collusive confederacy and an improper and unlawful scheme to wrongfully confer jurisdiction upon this Court, and that a collusion to that end was entered into before this suit was instituted and has been and is now being maintained between D. O. Mills, complainant, and the Peoples Gas, Light & Coke Company, defendant; that in pursuit of said collusion the said Gas Company is made, with its consent, defendant, its interests being co-extension and in common in all questions of law and fact with the interests of complainant.

This defendant further answering, says that the same relief was asked for in the prayer of the original bill herein as was prayed for in the bill filed by the defendant, Gas Company; that prior to the decision in the Supreme Court of the Company's appeal, the demurrer to this original bill was argued, and that upon such argument counsel of the complainant urged upon the consideration of the Court not only the want of power in the City Council to pass the ordinance of October 15, 1900, but also the same claim of contract rights in the defendant company to charge One Dollar per thousand feet.

This defendant further shows that the same counsel argued the demurrer to the original bill herein who was the senior counsel for the Gas Company in the argument before the Supreme Court, that the same arguments were pressed in both cases and on both the points argued, as appears from the record of the said causes and briefs therein filed.

185 XXXIV. This defendant shows that at all times since the passage of the ordinance of October 15, 1900, the complainant herein and the defendant gas company have made every effort to obtain the same relief, that there never has been a difference in allegations or interests and no conflict between them as to the desire to defeat the ordinance of October 15, 1900, that they have simultaneously sought the same relief by the efforts of the same counsel, using the same arguments, that there is no antagonism between the complainant and the directors of the defendant gas company, that there is perfect unity of purpose and a perfect understanding between them.

XXXV. Further answering, this defendant shows that after the decision of the Supreme Court of the United States, finding that this defendant company had no contract rights as set up in its Bill and in complainant's original Bill herein, complainant filed his amended bill herein, wherein he abandoned the claim of any contract right and confining himself to the contention that the City Council derived no power from the State legislature to regulate the price of gas.

This defendant shows that the same contention was argued by the defendant company before the Supreme Court of the United States, and that that Court decided that it had no jurisdiction, that it was not a federal question.

XXXVI. This defendant shows that after that decision the defendant has not since raised that question in the State court, which this court has already decided alone has jurisdiction, and the complainant has not requested the company to file a bill raising this

question in the State court and this defendant avers that
186 such bill has not been filed and such request to the defendant company has not been preferred by the complainant, because both this company and this complainant desire that the question be determined by the United States Court, and both the complainant and the defendant company desire to keep out of the State court.

XXXVII. This defendant further answering, says that the complainant's interests are not suffering by the directors in not raising the question of power, because the defendant company has raised and pressed the question to the highest court in the land, and any claim of difference is colorable and is made for the purpose of wrongfully gaining jurisdiction for a stockholder's bill, and with a purpose of creating a situation which will induce a federal court to pass on a question which it has already determined is not a federal question.

This defendant further answering, states, that it has no knowledge or information except as shown in said amended bill, as to whether or not on the 16th day of December, 1903, said complainant addressed a certain communication to the board of directors of said defendant company making certain requests, or as to whether or not the said defendant company refused and still refuses to carry out the requests of said complainant, or as to whether complainant made requests to the meeting of stockholders of the said defendant company, or as to whether or not the meeting of stockholders refused to carry out the requests of the said complainant, or as to whether or not the said complainant is unable to procure the institution or prosecution of this suit or of any other suit in the name of the defendant company, and therefore this defendant neither
187 admits nor denies the allegations in such behalf in said amended bill of complaint contained, but calls for full proof thereof if deemed material.

This defendant further answering, denies that the complainant is unable to procure a suit to be brought in a court of proper jurisdiction.

XXXVIII. This defendant shows that there is no *bona fide* dispute between the complainant and the directors of his company, but that on the contrary it is a collusive attempt to make this court take jurisdiction of a question over which it has already decided it has no jurisdiction.

This defendant further answering, states, that the refusal of the board of directors to commence a suit in said court, if they have so refused, is not *bona fide*, and is collusive, and that the demand of the complainant and the refusal of the directors are a part of a scheme to secure the hearing of this cause of action in the United States courts.

XXXIX. This defendant further answering, shows unto the Court that the original People's Gas Light & Coke Company, under and by virtue of the provisions of an act of the Legislature of the State of Illinois, approved on the 5th day of June, 1897, known as the "Gas Consolidation Act," merged and consolidated with certain other Gas Companies then existing and doing business in the City of Chicago, as follows:

With the Chicago Gas Light & Coke Company, the Consumers' Gas Company, the Equitable Gas Light & Fuel Company of
188 Chicago, The Suburban Gas Company, The Lake Gas Company, The Illinois Light, Heat and Power Company, and the Chicago Economic Fuel Gas Company, in August, 1897; with the Mutual Fuel Gas Company and the Hyde Park Gas Company, in January, 1898, and with the Calumet Gas Company, in November, 1898, that the Consolidated Company is the defendant Company, and by agreement, the name of the Consolidated Company is The People's Gas Light and Coke Company.

XLI. That the said Consolidated Company upon the said merger, took over and acquired all the gas mains, pipes, feeders, supplies, service pipes, connections and appurtenances, and all the manufacturing plants, buildings, machinery and property of all of the said companies including those of the original People's Gas Light and Coke Company.

That after the said consolidation, the said original companies ceased to manufacture and supply gas to consumers in the City of Chicago.

XLII. That prior to the said consolidation, the said original People's Gas Light and Coke Company was doing business practically only on the west side of the City of Chicago, but the Consumers' Gas Company, the Equitable Gas Light and Fuel Company and the Chicago Economic Fuel Gas Company furnished gas only in a portion of the south Division of the City of Chicago; that the Chicago Gas Light and Coke Company supplied gas in parts of the South and North Divisions of the City, and had laid some pipes and mains in the West Division; the Suburban Gas Company
189 furnished gas in part of the old Town of Lake View; the Mutual Fuel Gas Company and the Hyde Park Gas Company supplied gas in parts of the old Village of Hyde Park; the Calumet Gas Company furnished gas in another part of the said former village of Hyde Park and the Lake Gas Company furnished gas in a part of the City formerly comprised in the old Town of Lake. The plant of the Illinois Light, Heat and Power Company had been leased to the *the* original People's Gas Light and Coke Company before the consolidation.

XLIII. This defendant shows that under the laws of the State of Illinois, neither the original People's Gas Light and Coke Company nor any other of the original companies so going into the said merger, had the power or authority to consolidate or merge with any other company in the City, or to buy out or absorb any other of the said companies, and that it was only by virtue of the power and authority given by the said Gas Consolidation Act of 1897 that gas companies in the same city could merge and consolidate with each other or buy each other out.

This defendant shows that by the said merger and consolidation, a virtual monopoly was created and that such merger and consolidation was against public policy and could not be brought about and maintained except by virtue of the provisions of the said Gas Consolidation Act of 1897.

XLIV. The defendant further shows that the said original People's Gas Light and Coke Company did not retain its entity as an original company under its said charter of 1855, and amended
190 charter of 1865, but states and so charges the fact to be that the said original People's Gas Light and Coke Company, in connection with the other said companies so enumerated herein each voluntarily and as an independent entity, merged and entered into, under the terms of the said act of 1897, the consolidated company called the People's Gas Light and Coke Company.

XLV. This defendant, further answering, denies that since said merger and consolidation under the act of 1897, the Consolidated People's Gas Light and Coke Company has uniformly charged the same rate or price for all gas sold by it in said city, but states that in various parts of the city and at various times it has sold gas in said City of Chicago for less than the sum of one dollar per thousand feet.

XLVI. This defendant, further answering, admits that said consolidated Company has not increased the price charged by it over the sum of one dollar per thousand cubic feet, but has no information other than from said amended bill as to whether or not the gas so supplied and sold by it, the said defendant company, has been better in quality and of higher candle power than the gas furnished by the original People's Gas Light and Coke Company and the other original companies, and therefore, this defendant neither admits nor denies the allegations in such behalf, but calls for full proof thereof if deemed material; but this defendant denies that the said defendant the People's Gas Light and Coke Company ever did business in the City of Chicago prior to said consolidation, and that it
191 charged any price for any produce, but shows that the said defendant, the People's Gas Light and Coke Company is the creature entirely of the statute of 1897, and derives its existence and powers as a consolidated company purely from the said act, and that the original People's Gas Light and Coke Company, upon the merger and consolidation, ceased to exist except as provided in the act of 1897, except for certain provisional, contingent and limited purposes as provided in the act of 1897.

XLVII. This defendant, further answering, states, that it has no knowledge of the consolidation of said companies other than from the constructive notice arising from the filing of the merger and consolidation papers in the office of the Recorder of Deeds of Cook County, Illinois, at the time of said merger of said companies.

XLVIII. This defendant, further answering, shows that when the said Consolidated Company was formed, all the original companies which were theretofore doing business under special charters granted prior to the adoption of the Constitution of Illinois of 1870, came under the provisions of the general laws of the State of Illinois, and therefore the right of the City of Chicago under the general law to regulate the price of gas was established throughout the entire territory covered by the said defendant, the Consolidated Company.

XLIX. This defendant, further answering, says that the pretended

letter of complainants of 1902 is on its face collusive; and in fact a false and pretended evidence of good faith; that it calls upon the defendant company to litigate both the question of the con-
192 tractual rights of the company as well as that of the power of authority, when the company was then in presumably good faith, contesting both questions.

That the amended bill cannot be predicated on the 1902 letter, even if it were written, in good faith, because since the letter was written, if any such ever was, and before the amended bill was filed, the Supreme Court of the United States decided that the question of power or authority is not a Federal question.

L. This defendant, further answering, asks to have the same advantage of the matters and things set up in this answer as if the same had been set up and maintained by way of demurrer, and as if this defendant had stood upon the said demurrer; and now having answered the said amended bill of complaint, or as much thereof as this defendant is advised it is material or necessary for it to make answer unto, without this, that there is any other matter, cause or thing therein set out material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, traversed, confessed and avoided or denied is true to the knowledge or belief of this defendant, all of which matters and thing this defendant is ready and willing to maintain and prove, as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE CITY OF CHICAGO,
By GRANVILLE W. BROWNING AND
HENRY M. ASHTON, *Its Solicitors.*

J. HAMILTON LEWIS,
Corporation Counsel,
Of Counsel.

(Endorsed:) Filed Aug. 19, 1905 Marshall E. Sampsell, Clerk.

193 And on to-wit: the seventh day of September, 1905, came the complainant in said entitled cause by his solicitors and filed in the clerk's office of said Court his certain Replication in words and figures following to-wit:

Replication.

Circuit Court of the United States for the Northern District of Illinois, Northern Division.

In Equity. No. 26796.

DARIUS O. MILLS, Complainant,
against
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

The Replication of the Above Named Complainant to the Answer of the Above Named Defendant The City of Chicago.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant the City of Chicago for replication thereunto says that he does and will aver, maintain and prove the said bill to be true, certain and sufficient in the law to be answered unto by said defendant, and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly—as in and by his said bill he has already prayed.

194 GUTHRIE, GRAVATH & HENDERSON,
52 William Street, New York, N. Y.,
HENRY W. WALES, JR.,
633 Monadnock Block, Chicago, Ill.,
Solicitors for Complainant.

WILLIAM D. GUTHRIE,
Of Counsel.

(Endorsed:) Filed Sep. 7, 1905, Marshall E. Sampsell, Clerk.

195 And on to-wit: the third day of October, 1905, there was filed in the clerk's office of said court in said entitled cause a certain Notice and affidavit of Henry M. Ashton in words and figures following to-wit:

Notice and Affidavit of Henry M. Ashton.

Circuit Court of the United States for the Northern District of Illinois, Northern Division Thereof.

In Equity. 26796.

DARIUS O. MILLS, Complainant,
vs.
CITY OF CHICAGO and PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

To Messrs. Guthrie, Gravath & Henderson, and Henry W. Wales, Jr., Solicitors for Complainant, and Sears, Meagher & Whitney, Solicitors for Peoples Gas Light and Coke Co., Defendant:

You are hereby notified that on Tuesday, the 3rd day of October, A. D. 1905, at 10 o'clock A. M. or as soon thereafter as counsel can be heard, we shall appear before his Honor Judge Grosscup, in the room then occupied by him as a court room in the Federal Building Chicago, and move that an order be entered in the above entitled cause for a rule against the complainant to file within a short time, to be fixed by the Court a new injunction bond, in the penal sum of $15,000,000, conditioned to indemnify the City of Chicago and all consumers of Gas within the said City of Chicago against any damages arising to them or any of them from the issuing of the injunction in the above entitled cause, and shall base said motion upon the face of the amended bill of complaint in said cause and the
196 files and records therein and upon the affidavit of Henry M. Ashton, a copy of which is hereto attached.

JAMES HAMILTON LEWIS,
Corporation Counsel of the City of Chicago.
HENRY M. ASHTON & MAXWELL EDGAR,
Special Counsel for said City.

Received a copy of the foregoing notice this 2nd day of October, A. D. 1905.

HENRY W. WALES, JR.

STATE OF ILLINOIS, *County of Cook, ss:*

J. E. Owen, being first duly sworn, on oath says he served a copy of the foregoing notice upon Messrs. Sears, Meagher & Whitney, by leaving a copy of said notice and affidavit attached with M. C. Iverson, a clerk in the office of said Sears, Meagher & Whitney on the 2nd day of October, A. D. 1905, at 3:45 P. M.

J. E. OWEN.

Subscribed and sworn to before me this 22nd day of September, A. D. 1905.

WEYMOUTH KIRKLAND,
[SEAL.] *Notary Public.*

197 Circuit Court of the United States for the Northern District of Illinois—Northern Division. In Equity.

DARIUS O. MILLS, Complainant,
vs.
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

STATE OF ILLINOIS, *County of Cook, ss:*

Henry M. Ashton, being first duly sworn, on oath, states that he is one of the solicitors for the defendant, the City of Chicago, in the above entitled cause and that this affiant is specially charged with the preparation and investigation of the conduct of the above entitled cause in behalf of the City of Chicago.

This affiant further states that on the 31st day of December, 1900, The Peoples Gas Light and Coke Company filed a bill against the City of Chicago, in the Circuit Court of the United States, for the Northern District of Illinois, seeking to enjoin the enforcement of an ordinance of the said city of Chicago, passed on the 15th day of October, 1900, in and by the terms of which said ordinance, it was provided that from and after the 1st day of January 1901, the said Peoples Gas Light and Coke Company should not charge to exceed the sum of 75 cents per thousand cubic feet of gas to any consumer within said City of Chicago; that a preliminary injunction issued on said day in accordance wtih the prayer of said bill of complaint that on the 30th day of July 1902, said bill of complaint came on to be heard before said Court and a decree was then entered dismissing said bill of complaint and that an appeal
198 was then taken by said Peoples Company to the Supreme Court of the United States, and pending said appeal, the preliminary injunction was continued in force upon the Company filing a bond in the sum of six hundred thousand dollars ($600,000.) conditioned to indemnify the City of Chicago against all damages sustained by it by reason of the continuing of said injunction in force, and that on the 4th day of April, 1904, a judgment was entered by the Supreme Court of the United States, affirming the decree of said Circuit Court, dismissing said bill.

This affiant further states that on the 8th day of June, 1903, Darius O. Mills, the complainant, filed the present bill of complaint, seeking to enjoin the City of Chicago from enforcing the same ordinance, and that on the 15th day of February 1904, an injunction was issued by this court in accordance with the prayer of the bill of complaint of said Mills, restraining the City of Chicago from enforcing said ordinance.

And this affiant further states that on the 9th day of February 1905, an injunction bond was filed in the above entitled cause in the penal sum of two hundred thousand dollars ($200,000) conditioned to indemnify the City of Chicago from all damages which it might sustain by reason of the wrongful issuing of the injunction in this cause.

And this affiant further states that the two bonds above mentioned, the one for $600,000 given in the said Peoples suit, and the other for $200,000 last above mentioned, are the only bonds of indemnity ever given in either of the two cases above enumerated, to
199 indemnify the City of Chicago against damages sustained by it, by reason of the wrongful issuance of said injunction, restraining the said City of Chicago from putting in force the said ordinance, so passed on the 15th day of October, 1900.

This affiant further states that the said Peoples Gas Light and Coke Company are now charging and collecting from all consumers of gas within the City of Chicago and have ever since the 1st day of January, 1901, collected from the consumers of gas within the City of Chicago, the sum of $1.00 per one thousand cubic feet, or in other words, have collected 25 cents per thousand cubic feet in excess of the amount prescribed in said ordinance, passed on the 15th day of October 1900, by the said City of Chicago.

This affiant further states that from the 1st day of January 1901, when the said ordinance, providing for the sale of gas at 75 cents per one thousand cubic feet went into effect up till the present time, the said Peoples Gas Light and Coke Company has collected from the consumers of gas in the City of Chicago, the sum of $52,590,964.

This affiant further states that this affiant gets his information in part from a statement made by the Investors Manual of 1905, published by the Economist Publishing Company of the City of Chicago, said manual, containing on page 63, a detailed statement of the Receipts and Expenditures of said Peoples Gas Light and Coke Company, during the period in question, and that this affiant has also investigated the files and records of the City of Chicago and that from said files and records this affiant finds that
200 the above statement by the said Economist Publishing Company is correct.

This affiant further states that the said Peoples Gas Light and Coke Company was only authorized under said ordinance of October 15, 1900, to charge the sum of 75 cents per one thousand cubic feet and had the said Peoples Company obeyed the said ordinance, they would have been entitled to collect from the 1st of January 1901, up to the present time, the sum of $39,443,223, and therefore this affiant further shows that the said Peoples Gas Light and Coke Company, during the period above described, have collected from the consumers of gas within the said City of Chicago, the sum of $13,147,741, in excess of the rate prescribed by said ordinance.

And this affiant therefore shows that should the ordinance above described, be held to be valid and constitutional, the said Peoples Gas Light and Coke Company have wrongfully withheld the sum of $13,147,741, of money belonging to the consumers of gas within the City of Chicago and will be obliged to pay to the said consumers of gas, said entire sum of money, and that said charge in excess of the rate prescribed by said ordinance is now accumulating at the rate of $2,817,373. per year or $7,719 per day.

This affiant further states that it appears from the amended bill of complaint in this cause, on Page 82 thereof, that the said Peoples

Gas Light and Coke Company has issued and outstanding $32,969,100 of capital stock of the par value of $100.00 per share and that there are now outstanding $34,496,000 of mortgage
201 bonds of the said Peoples Gas Light and Coke Company, for which it is liable.

This affiant further states that during the years 1901, 1902, 1903 and 1904, the Peoples Gas Light & Coke Company distributed large amounts of dividends to its stockholders and that said Company has failed to keep any reserve fund for the purpose of meeting the amount that said Company is owing to the said consumers of gas within said City of Chicago.

This affiant further states that it appears from the reports of the said Peoples Gas Light and Coke Company in December 31 1904, that it then had on hand only $1,860,247 in cash, a sum which is wholly insufficient to pay the said amount of money so due to the consumers of gas within the said City of Chicago.

This affiant further states that on December 31, 1904, the said Peoples Gas Light and Coke Company claimed to have assets amounting to $78,713,918, of which assets the said Peoples Gas Light and Coke Company claimed that its plants and franchises were worth $72,188,763.

This affiant further states that he has investigated the value of the said plants and franchises of the said Peoples Gas Light and Coke Company and this affiant states that he is informed and believes and upon such information and belief states the fact to be that said plants and franchises of the said Peoples Gas Light and Coke Company are not worth the said sum of $72,188,763, but are now actually worth the sum of about $36,000,000, but that even if said plants and franchises should be worth the amount claimed for them by the said Company, they could not be devoted to pay-
202 ing the said sum of $13,147,471, now due to the consumers of gas within the said City of Chicago.

And this affiant further states that the said Peoples Gas Light and Coke Company and the said complainant Mills, have given only two bonds of indemnity to the city of Chicago, amounting to $600,000 and $200,000 respectively and aggregating $800,000 and therefore your affiant shows that as security for the repayment to the consumers of gas within the said city of Chicago of the sum of $13,147,741, in case said ordinance is held to be valid, the said Peoples Gas Light and Coke Company and the said complainant have given bonds for less than $1,000,000 and in case the said first mortgage bonds of the said Peoples Company should be foreclosed the said consumers of gas would be unable to recover the said sum of $13,147,741, wrongfully collected by the said Peoples Gas Light and Coke Company during the pendency of this litigation.

And your affiant further states that the said bond filed by the complainant, Mills, and the said bond filed by the Peoples Gas Light and Coke Comapny, each are conditioned merely for the payment of such damages as shall be sustained by the City of Chicago by reason of the wrongful issuance of said injunction, restraining the enforcement of said ordinance of October 15, 1900, and that

neither of said bonds *are* conditioned to pay any damages sustained by other consumers of gas, aside from the City of Chicago, accruing to said consumers of gas by reason of the wrongful issuance of said injunction.

And this affiant further states that there are about 300,000 consumers of gas within the said City of Chicago, who purchase
203 said gas from the said Peoples Company, and that all of said consumers of gas are now paying 25 cents per one thousand cubic feet in excess of the amount prescribed by said ordinance and are left without any security to indemnify them against said excessive charges in the event that the said Peoples Company should be unable to make said payments.

HENRY M. ASHTON.

Subscribed and sworn to before me this 21 day of September, A. D. 1905.

[SEAL.] MARSHALL GALLION,
Notary Public.

(Endorsed:) Filed Oct. 3, 1905. Marshall E. Sampsell, Clerk.

204 And on to-wit: the third day of October, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of October 3, 1905.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

On motion of the defendant, the City of Chicago, it is ordered that the motion for a rule on the complainant to file an increased bond herein be set for argument on October 10th instant.

205 And on to-wit: the tenth day of October, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of October 10, 1905.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO.

By agreement of counsel in open court it is ordered that the motion of the defendant, City of Chicago, for increase in bond given by the complainant is hereby postponed for hearing to October 24th instant at 10 o'clock A. M.

206 And on to-wit: the twenty-fourth day of October, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of October 24, 1905.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

By agreement of parties, the motion of the defendant for an increase in bond is postponed one week.

207 And on to-wit: the thirty-first day of October, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of October 31, 1905.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

Now again come the parties by their solicitors, and by agreement of counsel in open court, it is ordered that the motion of the City of Chicago for an increase of bond herein and the cross-motion of the complainant to apportion the time for taking proofs herein be, and the same is hereby, continued until November 1st, 1905, at ten o'clock A. M.

208 And on to-wit: the first day of November, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of November 1, 1905.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

Now again come the parties by their solicitors, and now comes on to be heard the motion of the defendant, the City of Chicago, for an increase of the penalty of said bond, and the Court having heard the same and not being sufficiently advised in the premises takes time to consider.

209 And on to-wit: the first day of November, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of November 1, 1905.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY.

Upon reading and filing the notice of motion with admission of service, and on motion of Guthrie, Cravath and Henderson, solicitors for plaintiff, the defendant City of Chicago being present by its counsel, James Hamilton Lewis and Henry Ashton and the defendant Peoples Gas Light and Coke Company being present by its counsel James F. Meagher and both counsel for defendants agreeing thereto, it is ordered that the plaintiff be and he hereby is allowed twenty days from this date in which to take his testimony in chief herein; that after notice from the plaintiff that his testimony in chief is taken, the defendants be and they hereby are allowed forty days in which to take their testimony herein, and that after notice from the defendants that their testimony is taken, the plaintiff be and he hereby is allowed twenty days further time in which to take his testimony in rebuttal; and it is further,

210 Ordered that said testimony be taken orally, and that either party is authorized to apply to the Court for further time or for a modification of this order upon a sufficient cause being

shown therefor; and it is further ordered that Hervey W. Booth, Master in Chancery be and he hereby is appointed special examiner herein under the 67th Rule in Equity as amended, who shall take the testimony in behalf of both plaintiff and defendants in the Northern District of Illinois or elsewhere, according to the convenience and requirements of the parties. Said testimony shall be given orally and be taken down by a skilled stenographer approved by the parties or appointed by the Court, and thereafter reduced to typewriting, and when subscribed by the witnesses and duly certified, the same shall be reported to the Court to be used upon the trial of this case.

211 And on to-wit: the tenth day of November, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of November 10, 1905.

26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO ET AL.

The Court having considered and being now fully advised upon the motion of said defendant, the City of Chicago, for a rule of said complainant to file a further bond of $15,000,000.00 on penalty of having the injunction heretofore entered herein dissolved, be and the same is hereby overruled and denied.

212 And on to-wit: the twentieth day of November, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, Circuit Judge, appears the following entry, to-wit:

Order of November 20, 1905.

26796

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

On motion of the complainant's solicitor and upon stipulation filed, It is Ordered that the time for the complainant to close his *prima facie* proofs herein be, and the same is hereby extended ten days from November 21st, 1905.

213 And on to-wit: the twenty-first day of November, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of November 21, 1905.

26796

DARIUS O. MILLS
vs.
CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY.

This day this cause coming on again to be heard on motion of the solicitors for The Peoples Gas Light and Coke Company, one of the defendants in the above entitled cause, it is hereby

Ordered, Adjudged and Decreed that the time for The Peoples Gas Light and Coke Company to plead, answer or demur to the Amended Bill of Complaint in the above entitled cause may be extended to Saturday, November 25, 1905.

214 And on to-wit: the twenty-fourth day of November, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of November 24, 1905.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO ET AL.

On motion of the said defendant, the Peoples Gas Light and Coke Company, it is ordered that the time for the complainant to take proofs be, and the same is hereby, extended to December 7th, 1905.

215 And on to-wit: the twenty-fourth day of November, 1905, came The Peoples Gas Light and Coke Company by its solicitors and filed in the clerk's office of said Court in said entitled cause its certain Answer to the Amended Bill of Complaint in words and figures following, to-wit:

216 *Answer of Peoples Gas Light & Coke Co. to Amended Bill.*

In the Circuit Court of the United States for the Northern District of Illinois, Northen Division.

Bill No. 26,796.

DARIUS O. MILLS, Complainant,
vs.
CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

Answer of Defendant The Peoples Gas Light and Coke Company to the Amended Bill of Complaint Filed February 1, 1905, in the Above Entitled Cause.

This defendant, saving and reserving unto itself all and all manner of benefit of advantage that can or may be had or taken to the many errors, uncertainties and imperfections of said amended bill of complaint, for answer thereunto, or unto such parts thereof as it is advised it is material or necessary for it to make answer unto, answering says:

I.

That it admits that it is a corporation duly organized and existing under and by virtue of a special act of the Legislature of the State of Illinois, approved February 12, 1855, as amended by an
217 act of the Legislature of said State approved February 7, 1865, with the powers, among others, as stated in clause or paragraph I of said amended bill of complaint.

II.

This defendant admits that after the passage of said act of February 12, 1855, and said amendatory act of February 7, 1865, this defendant acted on the privileges and powers therein contained, and duly accepted the same, and in reliance thereon, and with the consent of the City of Chicago, constructed and erected gas works and laid pipes in said city, for the distribution and delivery of gas to consumers thereof, in said city, and to said City, as in said amended bill specified; and that the Common Council of the City of Chicago adopted, on August 30, 1855, an ordinance in the words and figures set out in paragraph or clause II of said amended bill of complaint.

III.

This defendant admits that, in pursuance of the privileges and powers granted in and by said charter, and in carrying out and performing the duties and obligations imposed thereby, this defendant invested many millions of dollars in erecting and constructing gas works, plants and appliances, and in laying down pipes, mains, feeders and appurtenances, to enable it to carry on the business of manu-

facturing and furnishing gas to consumers thereof throughout the City of Chicago, and that it has continuously, for upwards of forty years last past, remained, and is now engaged, in the business of manufacturing, selling and distributing gas by means of pipes, mains, feeders and appliances laid in the streets of said city;
218 and this defendant admits that it has invested its capital and funds in the development of its business in the city of Chicago, in real estate and personal property in said city of the value of upwards of twenty millions of dollars; that it has many buildings factories, retorts and apparatus for the manufacture, sale and distribution of gas in said city, and in all parts and divisions thereof; that it owns, maintains and operates, at this time, upwards of two thousand miles of gas mains laid in the streets, alleys, avenues, highways and public squares of said city, and that it has upwards of four thousand miles of service pipes, and that it supplies gas to upwards of three hundred and fifty thousand consumers in said city, and that the authorized and outstanding shares of capital stock, and the issued and outstanding bonds of this company or for which it is liable are as stated in said amended bill; and this defendant admits that complainant was, at the time of filing said amended bill, the owner of upwards of ten thousand shares of the capital stock of this defendant, as stated in said amended bill, and is still the owner of upwards of eight thousand shares of said capital stock of the par or face value of one hundred dollars each.

IV.

This defendant admits that the rates and charges for gas manufactured by it from time to time to consumers thereof in the city of Chicago was and is substantially as stated in said amended bill.

This defendant further admits that the city of Chicago is, and for many years last past has been, a customer of this defendant, in the same sense, and in the same way, and under the same con-
219 ditions, as every other customer in said city, and that the bills of said city of Chicago, for gas manufactured and sold by the defendant during the years 1899 and 1900, were as stated in said amended bill.

V.

And this defendant admits that on or about the fifteenth day of October, 1900, the City Council of the City of Chicago, passed and adopted a certain ordinance in the words and figures set out in said amended bill in paragraph or clause V thereof, and admits that said ordinance was not afterwards vetoed, repealed, modified or amended by said City Council of the City of Chicago.

VI.

And this defendant alleges that it is advised by counsel, and so charges the fact to be, that the Legislature of the State of Illinois, had not, at any time prior to the fifteenth day of October, 1900, authorized or empowered the Common Council of the City of Chicago to fix or regulate the prices to be charged by this defendant, or any

other manufacturer for gas furnished, supplied or sold by it or them as in said ordinance attempted, and this defendant charges that said ordinance was passed without authority under the laws of the State of Illinois, and that it is in all things null and void, and of no force and effect; and this defendant alleges that subsequent to the passage of said ordinance, and on or about the eighteenth day of May, 1905, the General Assembly of the State of Illinois attempted to enact a law to, among other things, confer upon the City
220 of Chicago power and authority to fix the rates and charges for the supply of gas for power, heating and lighting, furnished by any individual, company or corporation to said City of Chicago, and the inhabitants thereof, which act, by its terms, provided that the same should not be put in force until the question of its adoption should first have been submitted to the electors of said City of Chicago, and approved by a majority voting thereon; that thereafter, and on the seventh day of November, 1905, the question of the adoption of said act was attempted to be submitted to the electors of such city, but the official announcement of the result of such submission has not yet been declared. Said law, so attempted to be enacted by the General Assembly of the State of Illinois, by its terms is limited to the City of Chicago, and is the only enactment of the General Assembly of the State of Illinois, which directly or indirectly confers, or attempts to confer, power upon the City of Chicago, or the City Council thereof, to fix the rates and charges for the supply of gas for power, heating and lighting within said City of Chicago. But this defendant alleges it has been advised by counsel, and so charges the fact to be, that said act, approved May 18, 1905, is unconstitutional and void; that the General Assembly of the State of Illinois was without power to validly enact that the City of Chicago alone, of all the cities in the State of Illinois, should have power and authority to fix the rates and charges for gas for purposes of power, lighting and heating; that said act is obnoxious to Section 13 of Article IV of the Constitution of 1870 of the State of Illinois, which provides in substance that no act thereafter passed shall embrace more than one subject; and, on like advice of counsel, this defendant charges that the pretended adoption of said
221 act, if the proper authorities shall duly declare that the same was duly adopted by the electors of said City, is null and void, because, as said act is drawn, and was adopted by the General Assembly of the State of Illinois, the same embraces more than one subject, and as the said act was submitted to said electors for adoption said electors were required to vote upon two propositions, without being given the right and privilege to vote upon either of said propositions separately, to wit: The title to said act covers two distinct subjects: (*a*) Granting to the City of Chicago power and authority to sell surplus electricity; and (*b*) granting to the City of Chicago the power and authority to fix the rates and charges for gas and electricity furnished by any person, company or corporation. The referendum clause of said act, for the submission of the question of the adoption of the same by the electors of the said City of Chicago (without which adoption said act was not to become a law) required the voter to vote Yes or No on two separate subjects, viz: Whether

the City of Chicago should be permitted to operate a municipal electric lighting plant for the purpose of selling electric light to private consumers, and, also, whether the City of Chicago should be authorized and empowered to fix the rates and charges by any person, company or corporation furnishing gas or electricity for purposes of power, lighting or heating, without permitting the voter to vote on either one of said propositions separately, or permitting a vote in the affirmative on one of said questions, and in the negative on the other thereof, but requiring an elector in order to cast a vote in favor of one of said questions which he might favor, to also cast a vote in favor of the other of said questions, although such elector might be utterly opposed to such other proposition; and for other reasons the attempted grant of power by said act of the General Assembly of the State of Illinois, approved May 18, 1905, was informal, in-
222 valid, unconstitutional and void. But this defendant alleges that the City Council of the City of Chicago has not as yet adopted any ordinance under the attempted authority conferred by said act of May 18, 1905.

VII.

And this defendant admits that the City of Chicago has repeatedly announced and threatened that it will proceed to enforce the said ordinance of October 15, 1900, against this defendant, and that it intends and threatens so to do, unless restrained by this Honorable Court, and also admits that numerous citizens of said City have refused to pay for gas except as in said ordinance provided, and have threatened to take steps against this defendant to enforce the terms and provisions of said ordinance of October 15, 1900, and the penalties therein provided.

VIII.

And this defendant admits that it has now upwards of 350,000 customers in the City of Chicago, in addition to the said City itself, to whom it is daily selling and distributing gas, and admits that, during the years 1900, 1901 and 1902, and up to the time of the filing of its answer, it sold and delivered gas to such consumers at the net rate of one dollar per thousand cubic feet, and in each year, its sales aggregated many hundred millions of cubic feet of gas, as stated in said amended bill; and this defendant admits that many of its customers are people of small means, and financially irresponsible, that it renders to each of its customers monthly statements for gas consumed by them, and collects therefor as stated in said amended bill, and that this defendant, unless said bills are promptly paid, discontinues the supply of gas to such customers in accordance with its rules and regulations in that behalf, and that such method is the only one by which this defendant is able to avoid great loss
223 by reason of the failure or inability of many of its customers to pay the bills for gas consumed by them; and this defendant admits that, if, pending the judicial determination of the validity of said ordinance of October 15, 1900, said ordinance shall nevertheless be enforced, or if the City of Chicago should nevertheless be permitted to begin prosecutions against this defendant for

failure to comply with the terms of said ordinance, a large number of the customers of this defendant would decline to pay the price fixed by it as aforesaid, and would refuse to pay anything whatsoever over and above the sum fixed by said City in said ordinance; and this defendant admits that if it should attempt to remove the meters in the houses of such customers, and should attempt to discontinue the supply of gas to them, it would immediately be subject to thousands of prosecutions on the part of said City, and if this defendant should permit the bills of said customers to run until the final determination of such suit or suits as might be brought, for failing to comply with the terms of said ordinance of October 15, 1900, the outstanding bills due and payable to this defendant would aggregate a very large sum of money; that by reason of the financial irresponsibility of a large number of said customers, this defendant in the event that said ordinance should be held to be void, would be unable to collect from such customers the amount of such outstanding indebtedness, and that thereby this defendant would suffer a loss aggregating a very large sum, the exact amount of which this defendant is unable to calculate, and which, in the opinion of this defendant, would be upwards of five millions of dollars.

224 IX.

And this defendant admits the allegations of said amended bill as contained in clause or paragraph IX thereof.

X.

And this defendant admits the allegations of said amended bill as contained in clause or paragraph X thereof.

XI.

This defendant admits that on or about the 16th day of December, 1902, said complainant addressed a communication to the board of directors of this defendant, requesting said board of directors to institute suit as alleged in clause or paragraph XI of said amended bill, a copy of said communication being Exhibit C attached to said amended bill; that subsequently said complainant made like application to the stockholders of this defendant, in regular annual meeting assembled on February 10, 1903, as stated in said amended bill, and that this defendant, by its board of directors, and by a large majority of its stockholders, refused to comply with the request of said complainant to institute suit as by him requested.

XII.

Further answering, this defendant shows unto the Court, and states the facts to be, that in the month of September, 1900, public agitation for a reduction of the rates charged by this defendant, for gas sold by it, was inaugurated in the city of Chicago; that demand

was made upon various public officials of the City of Chicago
225 and the State of Illinois, to institute proceedings at law and otherwise, against this defendant; that thereafter, the ordinance of October 15, 1900, was adopted by the City Council of the City of Chicago, which ordinance, by its terms, was to be in full force and effect from and after January 2, 1901; that on December 31, 1900, the original bill of this defendant against the City of Chicago was filed in the Circuit Court of the United States for the Northern District of Illinois, Northern Division, which case came on for hearing and was heard and argued on January 2 and 3, 1902; that in the course of said suit an amended bill of complaint was filed by this defendant; that an appeal was prayed by and allowed and perfected by this defendant from the decree of the Circuit Court of the United States to the Supreme Court of the United States, and the decision of said Supreme Court will be found in the 194 U. S. Reports at page 1. This defendant refers to the record of said suit in the Circuit and Supreme Courts of the United States for a statement of the allegations of the original and amended bills filed by this defendant therein, and for the decisions and judgments rendered in said cause, in all courts, with the like force and effect as if said allegations, decisions, and judgments were herein set out at length.

XIII.

This defendant, further answering, shows unto the Court that on August 9, 1901, Charles S. Deneen, as State's Attorney of Cook County, Illinois, filed a petition in the Circuit Court of said County, for leave to file an information in the nature of *quo warranto*, which petition was thereupon by the Court granted. Said infor-
226 mation alleged, among other things, that this defendant, contrary to law, and in addition to the franchises of this defendant, was usurping, and continued to usurp, and use, without any legal warrant whatsoever, certain franchises and privileges in said information described, to the great damage and prejudice of the People of the State of Illinois, and against the peace and dignity of the same, whereupon the said State's Attorney, in the name and by authority of, and in behalf of, said People of the State of Illinois, prayed the consideration of the Circuit Court in the premises, and that this defendant might be summoned to answer by what warrant it used and claimed to have used and enjoyed the powers, franchises and privileges which it was alleged, in and by said information, it was using and usurping contrary to law. The purpose of said proceeding was to test the constitutionality of the act of the General Assembly of the State of Illinois, approved June 5, 1897, in force July 1, 1897, under authority of which act this defendant had acquired the property of certain other gas companies theretofore doing business in the City of Chicago, and being substantially the property described in the amended bill filed by this defendant, as complainant against the city of Chicago, on June 6, 1902, *nunc pro tunc* as of January 15, 1902, in the Circuit Court of the United States for the Northern District of Illinois, as hereinbefore stated.

Thereafter, such proceedings were had in said *quo warranto* proceeding that by the consideration of the Circuit Court of Cook County, said information was, on, to-wit: October 28, 1901, dismissed, whereupon the said State's Attorney appealed from the decision of said Circuit Court of Cook County to the Supreme Court of the State of Illinois; and, thereafter, and on October 27, 1903, by the
227 consideration of the Supreme Court of the State of Illinois, the judgment of the Circuit Court of Cook County dismissing said *quo warranto* proceedings, was in all things affirmed.

Subsequently, a petition for rehearing was filed in said Supreme Court, which rehearing was denied on, to wit, December 11, 1903. In the opinion of the Supreme Court of the State of Illinois, in said *quo warranto* proceedings, the Court held, among other things, that said act was a constitutional and valid enactment of the General Assembly of the State of Illinois, and while the general rule of law was that the consolidation of several corporations into a new one invests the latter with all the rights and privileges of the several constituent companies, such was not the result of consolidation and merger under the act in question, and that this defendant was not using any other rights or privileges than those contained in and granted by the charter of this defendant, being said act of the General Assembly of the State of Illinois, approved February 12, 1855, as amended by the act approved February 7, 1865.

XIV.

This defendant, further answering, shows unto the Court and states the fact to be, that on or about December 16, 1902, it received from said complainant a letter, being the same letter Exhibit C attached to the amended bill of complaint filed in the above-entitled cause; that at a regular meeting of the board of directors of this defendant, held at the office of this defendant on January 29, 1903, which was the first meting held by said board subsequent to the receipt of said letter, the President of this defendant stated to the board that on receipt of said communication from complain-
228 ant, he had submitted the same to counsel to the company, with directions to communicate to said board of directors, at its next meeting, counsel's opinion as to what action should be taken by this defendant on such request; that at said meeting, held on January 29, 1903, James F. Meagher, who then was and is now counsel to this company, was present, and advised said board of directors that, while appreciating the force of complainant's position, nevertheless, in the opinion of said counsel it would be impolitic, if not imprudent, for this defendant company to comply with the said request of said complainant; that if this company were to commence new litigation, such action might arouse prejudice against this defendant, and result in additional adverse action by the Common Council of the City of Chicago against this defendant, and its business; that at said meeting, said counsel called attention to the fact that the then Mayor of the City of Chicago who was a candidate for re-election at the general municipal election to be held in April 1903, had stated, in effect, in a printed platform of principles then

recently issued, to the citizens of the city of Chicago, on his behalf, that he (said Mayor) had reduced by twenty-five per cent. the price of gas to the City of Chicago, and to gas consumers in said city, and that he was, therefore, entitled to the favorable consideration of his fellow citizens, and to their suffrages at the coming election; said counsel further stated to said board, at said meeting, that it might be seriously injurious to the best interests of this defendant to have such a question agitated, which the institution of new litigation would tend to create. Thereupon, said counsel advised said board of directors, at said meeting, that the only safe course to pursue was to defer action until the Supreme Court of the United States should finally decide upon the merits of the case commenced by this defendant in the Circuit Court of the United States for the Northern District of Illinois, and then pending on appeal in the Supreme Court of the United States, as heretofore alleged; that after a very full
229 discussion of said matter, the following resolution was unanimously carried at said meeting:

"Resolved, That this Company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the Board of Directors of this Company, dated the sixteenth day of December, 1902, for the reason that this Board believes that for this Company to institute further legal proceedings to contest the legality of the ordinance adopted by the Common Council of the City of Chicago, October 15th, 1900, would excite public prejudice against this company, which at the present time it is deemed of great importance to avoid.

Be it further resolved, the Secretary be instructed to notify Mr. Mills of the action of this Board at this meeting, and send him a copy of this resolution."

That on the same day, the following communication was addressed by H. W. Olcott, the Assistant Secretary of this defendant to said complainant:

"JANUARY 29, 1903.

D. O. Mills, Esq., 35 Wall Street, New York.

DEAR SIR: I beg to acknowledge receipt of your letter of December 16, 1902, which was submitted to the Board of Directors of the Company, and after conference with the counsel to the Company, the Board felt constrained under all the circumstances to decline to institute any further litigation at the present time, and their action was evidenced by the following resolution, which I am directed to communicate to you, viz:

'Resolved, That this Company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the Board of Directors of this company, dated the sixteenth day of December, 1902, for the reason that this board believes that for this company to institute further legal proceedings to contest the legality of the ordinance adopted by the common council of the City of Chicago, October 15th, 1900, would excite public prejudice against this company, which at the present time it is deemed of great importance to avoid.

'Be it further resolved, the secretary be instructed to notify Mr.

Mills of the action of this board, at this meeting, and send to him a copy of this resolution.'

Yours very truly,

H. W. OLCOTT,
Assistant Secretary."

230 XV.

And this defendant, further answering, shows unto the Court, and states the fact to be, that a regular annual meeting of the stockholders of this company was duly called and held at the office of this defendant on February 10, 1903, at eleven o'clock A. M.; that at said meeting there were present stockholders, in person or by proxy, representing 258,379 shares, out of a total of 329,691 shares, of the issued and outstanding capital stock of this company; that at said annual meeting of stockholders the following proceedings were had and taken:

"Mr. R. R. Rogers, proxy for D. O. Mills, a stockholder of this company, thereupon offered the following preamble and resolution, and moved the adoption of the same:

"Whereas, heretofore, said D. O. Mills submitted to the board of directors of this company the following letter:

NEW YORK, *December 16th*, 1902.

To the Board of Directors of The Peoples' Gas Light & Coke Co.

DEAR SIRS: I believe you are aware that I am and for upwards of five years last past have been, the largest stockholder of The Peoples' Gas Light & Coke Company, and of course as such stockholder, I am vitally interested in the questions which have arisen under the ordinance of the Common Council of the City of Chicago, reducing the price to be charged for illuminating and fuel gas to seventy-five cents per thousand cubic feet. I have caused to be submitted to my counsel the proceedings in the suit instituted in the Circuit Court of the United States at Chicago, for the purpose of restraining the enforcement of this ordinance on the ground that it constituted an impairment of the obligation of the contract contained in our charter, together with a copy of the opinions of Judge Grosscup, and have informed such counsel that the case has been appealed to the Supreme Court of the United States, and will probably not be reached for argument until some time during the year 1904. I am advised by counsel that the interests of The Peoples Gas Light & Coke Company may not be adequately protected by the pending litigation for the following reasons:

First. That the bill in the pending suit was dismissed for want of jurisdiction in the Circuit Court of the United States for the Northern District of Illinois, and that in view of such disposition the Supreme Court of the United States may limit the point which it will consider on the present appeal to the naked question of jurisdiction.

Secondly. That the present suit does not involve any question as to the power of the Common Council of the City of Chicago to reduce the charges of our company.

231 In view of the vital interest to all the stockholders of these questions, I hereby request that you will cause to be instituted at the earliest practical moment a new suit against the City of Chicago, or otherwise, for the purpose of preventing the enforcement of this ordinance, upon the ground that it impairs our charter contract, and that the common council had no power to pass it. The facts stated in the amended bill of complaint in the pending suit, I am advised fully show the necessity for a resort to equity for the protection of our rights.

It seems to me that the importance of this matter to the company and its stockholders cannot be exaggerated. If the ordinance is valid, the revenue of the company will be decreased one quarter of the present gross income, and very much more than this of the net income.

Yours very truly, D. O. MILLS.

And Whereas, in answer to such letter, the board of directors took the action evidenced by the letter of the Assistant Secretary of this company to Mr. Mills, as follows:

JANUARY 29TH, 1903.

D. O. Mills, Esq., 35 Wall Street, New York.

DEAR SIR: I beg to acknowledge receipt of your letter of December 16th, 1902, which was submitted to the board of directors of the company, and after conference with the counsel to the company, the board felt constrained under all the circumstances to decline to institute any further litigation at the present time, and their action was evidenced by the following resolution, which I am directed to communicate to you, viz:

'Resolved, that this company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the board of directors of this company, dated the sixteenth day of December, 1902, for the reason that this board believes that for this company to institute further legal proceedings to contest the legality of the ordinance adopted by the common council of the City of Chicago, October 15th, 1900, would excite public prejudice against this company, which at the present time it is deemed of great importance to avoid.

'Be it further resolved, the secretary be instructed to notify Mr. Mills of the action of this board, at this meeting, and send to him a copy of this resolution.'

Yours very truly, H. W. OLCOTT,
Assistant Secretary.

Resolved, that the directors, and officers, of the company be instructed and directed to comply with the request of Mr. D. O. Mills, and to institute legal proceedings against the City of Chicago, or otherwise, for the purpose of restraining the enforcement of the

ordinance of October 15th, 1900, on the ground that it impairs our charter contract, and that the common council had no power to pass said ordinance.

The motion to adopt said preamble and resolution being seconded, was thereupon put by the chair, and lost, votes representing 21,995 shares, being the shares of the capital stock represented by the proxy of Mr. D. O. Mills, being cast in favor of the adoption of said resolution, and votes, representing 236,384 shares, being cast against the adoption of said resolution.

Thereupon the chairman declared that the motion of Mr. Rogers, as proxy for said D. O. Mills, was not carried, and that the majority of the stockholders of this company has voted to refuse to comply with the request of said D. O. Mills, as embodied in said preamble and resolution."

232 XVI.

This defendant, further answering, shows unto the Court, and states the fact to be, that there was no collusion of any sort between the said complainant and this defendant in the commencement of the above entitled cause; that at the time of the receipt of said communication from complainant, dated December 16, 1902, the cause commenced by this defendant as complainant against the City of Chicago, was then pending in the Supreme Court of the United States, the transcript of the record in which cause had been filed in said Supreme Court on September 25, 1902. This defendant, in the original bill filed by it, on December 31st, 1900, had set up the contract which it believed was contained in its charter, being the act of the General Assembly of the State of Illinois, of February 12, 1855, as amended by the act approved February 7, 1865, and alleged the impairment of such contract by the adoption of said ordinance of October 15, 1900, and the acts threatened to be done under authority thereof, as set up and alleged in said bill; that such impairment was obnoxious to and prohibited by Section 10 of Article I of the Constitution of the United States of America; that said original bill also set up the want of power in the City of Chicago to validly enact said ordinance. The Circuit Court of the United States, for the Northern District of Illinois, Northern Division, held on January 15, 1902, that the question of power of the City of Chicago to adopt said ordinance was one for the State courts to decide. The amended bill filed by this defendant in said cause on June 6, 1902, *nunc pro tunc* as of January 15, 1902, proceeded upon the theory of the charter of this defendant being a contract, the impairment of which, in the manner aforesaid, was prohibited by the Constitution of the United States as above alleged, and also alleged that the ordinance of the City Council of October 15, 1900, was passed arbitrarily, unlawfully and unwarrantably, as in said amended bill will fully appear; the judgment and decree of said Circuit Court of the United States, for the Northern District of Illinois, was that the demurrer to the amended bill be sustained,
233 and that said amended bill be, and the same was, dismissed for want of jurisdiction. Contemporaneous with the pend-

ency of said suit in the Circuit Court of the United States, the *quo warranto* proceeding instituted by the State's Attorney of Cook County, to test the constitutionality of the act of 1897, pursuant to which this defendant had acquired the properties of certain other gas companies as hereinbefore stated, was pending in the State courts of Illinois.

The litigation to which this company was party had created a hostile sentiment to this defendant on the part of many of the citizens of the city of Chicago, and when the Circuit Court of Cook County dismissed said *quo warranto* proceeding, the comments in the press upon the action of the Court in that behalf were such that proceedings were thereafter had which resulted in certain employés and editorial writers of a newspaper being punished as for contempt of Court, although thereafter, the persons so punished were released by another branch of the Circuit Court of Cook County, all of which proceedings, however, tended to keep the question of the reduction of said rates prominently before the people of the City of Chicago, and to keep augmented and alive the feeling of hostility engendered against this defendant, which, however, had in a measure subsided at the time of the receipt of said letter of complainant in December, 1902.

It was in this situation of affairs, that counsel to this defendant advised the board of directors of this defendant, at said meeting held on January 29, 1903, that it would be impolitic and imprudent to comply with the request of said complainant, and commence another proceeding to test the validity of said ordinance of October 15, 1900, before the pending appeal to the Supreme Court of the United States, and the pending appeal in the *quo warranto* proceedings had been finally disposed of.

234 XVII.

This defendant, further answering, shows unto the Court, and charges the fact to be, that said counsel advised said board at said meeting, further, that the effect upon the pending suits, if this defendant should comply with the request of the said complainant as contained in said letter of December 16, 1902, of instituting a new suit raising the question of the power of the City of Chicago to validly enact said ordinance of October 15, 1900, might be very prejudicial; that, in his opinion, the judgment in the *quo warranto* proceedings would be affirmed, and the judgment in this defendant's suit on appeal to the Supreme Court of the United States would be reversed; that if a new suit were commenced, it was almost certain the point would be made and urged, on the argument of said cases in the Supreme Court of the State of Illinois, and the Supreme Court of the United States, either directly or indirectly, that this defendant had no faith in the contentions advanced in said proceedings, and said counsel so advised the board of directors of this defendant at said meeting, stating that, in his opinion, which opinion counsel stated to the board was concurred in by associate counsel Thomas A. Moran and Nathaniel C. Sears, after earnest consideration of the

question, that in view of the pending litigation, and of the questions at issue in said suits, it was the duty of said board of directors to refuse to comply with the request of complainant, as contained in said letter of December 16, 1902.

XVIII.

This defendant further answering, shows unto the Court that thereafter, and on or about January 25, 1904, the Circuit Court of the United States, for the Northern District of Illinois, Peter S. Grosscup Justice presiding, held on argument of the demurrer interposed by the City of Chicago to the amended bill of complaint filed in the above entitled cause, that the General Assembly had not delegated to the City of Chicago power and authority to
235 validly enact said ordinance of October 15, 1900, and that the said ordinance was of no effect, and was null and void, and issued an injunction restraining the enforcement of said ordinance by or on behalf of the City of Chicago, or of the customers of this defendant, and restraining this defendant from complying with said ordinance. The opinion of Justice Grosscup was filed in the Supreme Court of the United States prior to the decision of the case therein pending, brought by this defendant against the City of Chicago, and this defendant submits that the decision of Justice Grosscup, on the amended bill filed by complainant as aforesaid, in all probability had the effect of satisfying the Supreme Court of the United States in the decision reported in 194 U. S., page 1, in view of this suit, and the decision therein, there was no necessity for then deciding the question of power of the City Council, although duly raised and fully argued.

XIX.

And this defendant denies all and all manner of collusion, or of confederacy or conspiracy with the said Darius O. Mills, by means whereof said suit was instituted by the said Darius O. Mills; that said suit was so instituted without collusion of any sort between this defendant and the said Darius O. Mills; that this defendant, for the reasons hereinbefore set forth, refused to comply with the request of said complainant to institute said suit; whereupon the said Darius O. Mills commenced the said suit without the aid, connivance or collusion of this defendant in any manner whatever.

And now having fully answered, this defendant prays to be hence dismissed, with its reasonable costs in this behalf sustained.

THE PEOPLES GAS LIGHT AND COKE COMPANY,
By C. K. WOOSTER, *Vice-Pt.*

SEARS, MEAGHER & WHITNEY,
Solicitors and of Counsel for Defendant Peoples Gas Light & Coke Company.

(Endorsed:) Filed Nov. 24, 1905. Marshall E. Sampsell, Clerk.

236 And on to-wit: the fifth day of December, being one of the days of the regular July term of said Court, 1905 in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis District Judge, appears the following entry to-wit:

Order of December 5, 1905.

26796.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY.

On motion of the solicitors for the defendant, The Peoples Gas Light and Coke Company, the City of Chicago not objecting, it is
Ordered that the time within which complainant shall put in his proofs in support of his bill be, and the same is hereby, extended to December 12, 1905.

237 And on to-wit: the seventh day of December, 1905, there was filed in the clerk's office of said Court in said entitled cause the certain Affidavit of James F. Meagher in words and figures following to-wit:

238 *Affidavit of James H. Meagher.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division:

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

DARIUS O. MILLS
vs.
THE CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY.

STATE OF ILLINOIS, *County of Cook, ss:*

James F. Meagher, being first duly sworn, states on oath that he is a member of the firm of Sears, Meagher & Whitney, Solicitors for The Peoples Gas Light and Coke Company, defendant in the above entitled cause, and has been in substantially sole charge and conduct of said case for said defendant; that on November 17, and 18, 1905, this affiant attended upon the takng of testimony before Hervey W. Booth, one of the Masters of this Court, and Special Examiner in said cause, in the City of New York; that the City of Chicago was represented by David K. Tone, a lawyer resident in the city of Chicago; that during the cross-examination of the complainant by Mr. Tone, he demanded that one A. N. Brady, a director of said defend-

ant Gas Company, be produced as a witness; that affiant thereupon endeavored to reach said Brady, but learned that he was in the city of Albany, but would return to New York on the following Monday, November 20, 1905, and so stated to said Tone, at which time he would be produced; that said Tone thereupon stated that his engagements in Chicago on November 20th, would prevent his being present in New York City on that day; that the taking of said depositions was thereupon adjourned until three o'clock on
239 said day, in order to enable said Tone to communicate by long distance telephone with associate counsel in the city of Chicago; that at three o'clock of said day, all parties met, and by agreement the further taking of said depositions was adjourned to November 27, 1905.

Affiant further states that on November 21, 1905, while this affiant was still in New York City, he was notified by telegram that the Committee on Gas, Oil & Electric Light of the City Council of the City of Chicago, to which committee had been referred a message and proposed ordinance of Hon. Edward F. Dunne, the Mayor of said City, fixing the price of gas to be charged by gas companies pursuant to an act of the General Assembly of the State of Illinois, which was adopted by the people of the City of Chicago at the election held on November 7th, 1905, would take up for hearing and consideration on Thursday, November 23, 1905, said message and ordinance, and said Committee requested the presence of this affiant before it on behalf of said defendant, The Peoples Gas Light and Coke Company.

Affiant further says that he attended upon said hearing on said November 23, 1905, which occupied a full half working day; that said Committee adjourned its further hearing of said matter until Tuesday, November 28, 1905; that on said last mentioned date affiant again attended upon said Committee at said hearing, which occupied a full half working day, and the further hearing before said Committee was thereupon adjourned until Saturday, December 2, 1905, and said Committee directed the Corporation Counsel of the City of Chicago to render an opinion to said Committee, to be ready for said meeting on December 2, 1905, as to certain questions which had arisen on the presentation by this affiant of matters involved in said hearing; that owing to the inability of the Corporation Counsel to prepare said opinion by December 2, 1905, this affiant was notified by the Chairman of said Committee that the further hearing of said matter had been adjourned until Tuesday, December 5, 1905, and requested to be then present.

Affiant further says that on Tuesday, December 5, 1905, he again attended upon said City Council Committee, and was occu-
240 pied a full half working day at said hearing; that the Corporation Counsel, Hon. James Hamilton Lewis, presented an elaborate opinion on the questions asked by said City Council Committee, requiring upwards of thirty pages of typewritten matter in said opinion; that after extended discussion, and presentation of facts and arguments both on behalf of the City of Chicago and of said The Peoples Gas Light and Coke Company, the further hear-

ing of said matter was by said Committee adjourned until Thursday, December 7th, 1905, at two o'clock P. M.

Affiant further states that the time within which complainant must close his proofs will expire on Tuesday, December 12th, 1905.

Affiant further states that since November 22, 1905, he has worked almost continuously to prepare the necessary data to present to said City Council Committee the facts and figures which he conceives necessary to be presented to said Committee in its investigation; that he has, with two exceptions, worked every night in his office since said date, usually stopping at about eleven o'clock; that he has been making as earnest an effort as he is capable of, to come to a settlement with said City of Chicago, represented by its Mayor and other officials, and said Committee, respecting the price to be charged for gas to the people of the City of Chicago and to said City, and while so engaged, he cannot give his time or attention to any other matter, and, as a matter of fact, this affiant has not, with few exceptions, given his time or attention to any other business matter since November 22, 1905.

Affiant further states that in and by his bill in the above entitled cause, the complainant alleges that the ordinance of October 15, 1900, adopted by the City Council of the City of Chicago, is invalid and void, because the said City Council was wholly without the power to validly adopt the same, the General Assembly of the State of Illinois never having delegated such power to cities in said State; that in the year 1900, a similar ordinance was adopted by the City Council of the City of Peoria, fixing the price to be charged for gas in said City of Peoria, at seventy-five cents per thousand cubic feet;

241 that suit was instituted in the Circuit Court of the United States for the Northern District of Illinois, by the Peoria Gas & Electric Company, attacking the validity of said ordinance, on the ground, among others, that the City of Peoria was without power to validly enact the same, because the General Assembly of the State of Illinois had never delegated such power to cities in Illinois; that thereafter such proceedings were had in said cause, that the same was by appeal removed to the Supreme Court of the United States, and is now pending in said court, and has been argued orally, and on printed briefs and argument, and submitted to the court; that the question of the power of cities in the State of Illinois to regulate, by ordinance, the price to be charged by gas companies, has been argued by counsel for said D. O. Mills, the above named complainant, and also by the Corporation Counsel of the City of Chicago, and the decision of said Peoria case may reasonably be expected to be handed down any Monday, said cause having been submitted, as aforesaid, some weeks ago.

Affiant further states that he believes the Supreme Court will decide said question of the power of cities to validly adopt enactments fixing the price of gas, and if so decided, such decision might be decisive of the above entitled cause.

Affiant further states that it is necessary for him personally to be present at the taking of said testimony in the City of New York; that the effort of counsel to the City of Chicago is to show collusion

between the above named complainant, and the defendant, The Peoples Gas Light & Coke Company, and it is therefore necessary for this affiant to be present at the taking of said testimony, in order to defend the rights of said defendant Gas Company; that this affiant cannot take the necessary time to prepare for the taking of said testimony in view of the demands upon him in the preparation for attendance on the meetings of said Committee, and to properly present the contentions of said The Peoples Gas Light & Coke Company in answer to the charges made against said Gas Company by certain officials of the City of Chicago; that if, as a result of the investigations and hearings now being conducted by said Council Committee, an agreement can be reached respecting the price to be charge for gas by the defendant The Peoples Gas Light and Coke Company, to the people of the City of Chicago, this affiant
242 believes it will result in the settlement of all of the litigation heretofore instituted and now pending between said defendant Gas Company and the City of Chicago, much of which is pending in this Court.

Affiant further says that in his opinion, further hearings will be required by said City Council Committee after the one now set for Thursday, December 7th, 1905.

And further, affiant saith not.

JAMES F. MEAGHER.

Subscribed and sworn to before me this 7th day of December, A. D. 1905.

[SEAL.] JOSEPH A. KUCERA,
Notary Public, Cook County, Illinois.

(Endorsed:) Filed Dec. 7, 1905. Marshall E. Sampsell, Clerk.

243 And on to-wit: the seventh day of December, 1905, there was filed in the clerk's office of said Court in said entitled cause the certain affidavit of Henry M. Ashton in words and figures following to-wit:

Affidavit of Henry M. Ashton.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

No. 26796.

DARIUS O. MILLS, Complainant,
vs.
THE CITY OF CHICAGO and PEOPLE'S GAS LIGHT AND COKE COMPANY, Defendants.

H. M. Ashton, being first duly sworn, deposes and says he is Special Counsel for the City in the above entitled suit, that said suit

was brought by the complainant to restrain the City of Chicago from enforcing an ordinance passed by the City Council of Chicago October 15, 1900, to go into effect January 2, 1901, fixing a rate of 75 cents to be charged for gas in the City of Chicago; that complainant, in his said bill, alleges that the operation of said ordinance would decrease the gross receipts of the Peoples Gas Light and Coke Company twenty five per cent; that during the time said ordinance has been in effect the gross receipts of the said Peoples Gas Light and Coke Company has been more than $52,000,000 and that the excess collected by the said Company above the said 75 cent rate
244 amounts to over $13,000,000.

Affiant further says that the only security at the present time in the way of bond is one bond for $600,000, filed in the suit brought by the Peoples Gas Light and Coke Company on December 31, 1900, which suit was dismissed by Judge Grosscup and the decision of Judge Grosscup affirmed by the Supreme Court of the United States; and a bond for $200,000 filed by the complainant in this suit.

Affiant further says that both of said bonds are so drawn that they do not furnish any indemnity to the consumers of gas within the City of Chicago, who have been obliged to pay the overcharges above referred to.

Affiant further says that Judge Grosscup refused to require an additional bond to be filed in the above entitled cause and stated in his opinion, among other things that the only issue remaining to be decided in this case was the one of collusion and that by the exercise of due diligence on the part of the city, such issue could be determined within thirty days.

H. M. ASHTON.

Subscribed and sworn to before me this 7th day of December, A. D. 1905.

MARSHALL GALLION,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Dec. 7, 1905, Marshall E. Sampsell, Clerk.

245 And on to-wit: the seventh day of December, 1905, there was filed in the clerk's office of said Court in said entitled cause the certain affidavit of Edward F. Dunne, in words and figures following to-wit:

246 *Affidavit of Edward F. Dunne.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

No. 26796.

DARIUS O. MILLS, Complainant,
vs.
THE CITY OF CHICAGO and PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

Edward F. Dunne, being first duly sworn, on oath, states that he is the Mayor of the City of Chicago; that he has been informed by counsel for the City of Chicago and upon such information states upon such information that the Peoples Gas Light and Coke Company is at the present time indebted to consumers of gas within the City of Chicago on account of overcharges occasioned by the failure of the Peoples Company to obey the ordinance in the bill of complaint in this cause described in a sum amounting to over $13,000,000; and this affiant is informed by counsel that the only security given at the present time by the complainant for the payment of the above large sum of money is a bond in the penal sum of Two Hundred Thousand Dollars ($200,000) filed in this cause, and another bond in the penal sum of Six Hundred Thousand Dollars ($600,000.) filed in the prior suit of the Peoples Gas Light and Coke Company *vs.* the City of Chicago.

247 And this affiant is further informed by counsel and upon such information states upon such information that the above bonds are each of them drawn in such a way that they do not furnish any indemnity to the consumers of gas within the City of Chicago who have been obliged to pay the overcharges above referred to.

This affiant further states that he has been informed by counsel for the City and upon such information states that Judge Grosscup refused to require an additional bond to be filed in the above entitled cause and stated as his reason therefor, among other things, that the only issue now remaining to be decided in this case was the question of collusion and that that issue could be disposed of within thirty days by the use of due diligence.

This affiant further states that no proposition for the settlement of the litigation pending between the Peoples Gas Light and Coke Company and the City of Chicago has ever been made to this affiant or to anybody else authorized to act for the City of Chicago, so far as this affiant has been informed; on the contrary, this affiant states that an investigation is now pending in reference to the reasonable price at which gas can be furnished to the consumers of the City of Chicago and that said investigation is being carried on by the Gas, Oil and Electric Light Committee of the City Council of the City of Chicago; that at a recent session of said committee this affiant re-

quested James F. Meagher, counsel for the Peoples Gas Light and Coke Company *refused* to produce its books before said Committee so that said Committee could determine what would be a reasonable price at which the said Peoples Company could manufacture
248 and sell gas within the City of Chicago; that said Meagher stated, in behalf of said Peoples Company that said Company would not produce its books before said Committee.

This affiant further states that he is informed by counsel for the City and upon such information states the fact to be that the above entitled cause has been pending since June 8, 1903 and that the defendant, Peoples Gas Light and Coke Company did not file an answer in the above entitled cause until the 30th day of October, 1905.

This affiant further states that he is opposed to any extension of time in which to close proofs in the above entitled cause, but on the contrary, this affiant has instructed counsel for the City of Chicago to bring the litigation in the above entitled cause to a final conclusion at the earliest possible date, as suggested by what he is informed Judge Grosscup declared should be done.

EDWARD F. DUNNE.

Subscribed and sworn to before me this 6th day of December, A. D. 1905.

MARSHALL GALLION,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Dec. 7, 1905, Marshall E. Sampsell, Clerk.

249 And on to-wit: the seventh day of December, being one of the days of the regular July term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of December 7, 1905.

26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO ET AL.

On motion of counsel for said defendant, The Peoples Gas Light and Coke Company, counsel being present, it is ordered that the time within which complainant shall close its proofs herein be, and the same is hereby extended ten days from and after December 12th, 1905.

250 And on to-wit: the twentieth day of December, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of December 20, 1905.

26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO ET AL.

On motion of the defendants' solicitor the time for the complainant to close its proofs herein be, and the same, is hereby extended to January 4th, 1906.

251 And on to-wit: the twentieth day of December, 1905, there was filed in the clerk's office of said Court in said entitled cause the certain affidavit of Henry M. Ashton in words and figures following to-wit:

252 *Affidavit of Henry M. Ashton.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 26796.

DARIUS O. MILLS, Complainant,
vs.
CITY OF CHICAGO and PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

STATE OF ILLINOIS, *County of Cook, ss:*

Henry M. Ashton, being first duly sworn, on oath, states that he is one of the solicitors for the above named defendant, the City of Chicago; that on the 10th day of November, 1905, Judge Grosscup entered an order in the above entitled cause denying the application of the City of Chicago for an increase in the injunction bond and at that time said Judge Grosscup stated that the only question that remained for decision in the above entitled cause was a question of collusion and that said matter could, by due diligence on the part of the City, be disposed of within thirty days.

This affiant further states that on the 1st day of Nov., 1905, an order was entered providing that the evidence in the above entitled cause should be taken before Hervey W. Booth, Special Examiner and that the complainant should close his proofs within twenty days.

This affiant further states that on the 24th day of November, 1905, the Peoples Gas Light and Coke Company made an application for an extension of the complainant's time to close
253 proofs until December 7, 1905; that at that time this affiant appeared before his Honor, Judge Landis and argued in

opposition to said motion for an extension of time and insisted that counsel for Mr. Mills had had ample time in which to close proofs in the above entitled cause and that over the objection and against the protest of this affiant an order was then entered, extending complainant's time to take proofs until December 7, 1905. Mot. on Dec., 5, 1905, the said People Company asked this C't to continue Complainant's time for closing proofs 5 days from Dec. 7, and that affiant did not oppose said motion but stated to the Court that affiant understood there would be no further extension.

This affiant further states that on the 7th day of December, 1905, the Peoples Gas Light and Coke Company again made a motion for an extension of time in which the complainant should close his proofs and that at that time this affiant and David K. Tone appeared as solicitors for the City of Chicago and argued in opposition to said motion and read the affidavits of this affiant and of his Honor, Edward F. Dunne, Mayor of the City of Chicago, and that over the objection of this affiant, the time of the complainant to close proofs in the above entitled cause was extended to December 22, 1905.

This affiant further states that the last continuance in the above entitled cause was secured upon the alleged ground that James F. Meagher, counsel for the Peoples Gas Light and Coke Company was required to appear before the Gas Committee of the City of Chicago and that negotiations for a settlement of the above entitled cause were pending.

This affiant further states that no negotiations for the settlement of the litigation in the above entitled cause is now pending.

This affiant further states that the rights of the consumers of gas within the City of Chicago, which have now accrued under the ordinance in controversy in this cause cannot be taken away by any agreement or compromise that could be made between
254 the City of Chicago and the Peoples Gas Light and Coke Company.

This affiant further states that although the last continuance was secured on the alleged ground that Mr. Meagher had to appear before the Gas Committee of the City Council, no session of said Committee has been held since December 14, 1905 and yet, during all of said time no attempt has been made to take any evidence in the above entitled cause.

This affiant further states that from November 18, 1905, up to the present time, no evidence whatsoever has been taken in the above entitled cause and no attempt whatsoever has been made by the complainant or the Peoples Gas Light and Coke Company to take any evidence since said November 18, 1905.

This affiant further states that the said Peoples Gas Light and Coke Company is collecting from consumers of gas within the City of Chicago more than $8000 per day in excess of the 75 cent rate prescribed by said ordinance and that no bond has been filed in the above entitled cause, except one for $200,000; that more than $13,000,000 in excess of the rate prescribed by the ordinance set forth in complainant's bill has been collected from consumers of gas within the City of Chicago since January 2, 1901.

HENRY M. ASHTON.

Subscribed and sworn to before me this 20th day of December, A. D. 1905.

WEYMOUTH KIRKLAND,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Dec. 20, 1905. Marshall E. Sampsell, Clerk.

255 And on to-wit: the twentieth day of December, 1905, there was filed in the clerk's office of said Court in said entitled cause a certain affidavit of David K. Tone in words and figures following to-wit:

256 *Affidavit of David K. Tone.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 26796.

DARIUS O. MILLS, Complainant,
vs.
CITY OF CHICAGO and PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

STATE OF ILLINOIS, *County of Cook, ss:*

David K. Tone, being first duly sworn, on oath, states that he is one of the solicitors for the above named defendant, the City of Chicago; that on the 17th and 18th days of November, 1905, the testimony of Richard Reid Rogers and the complainant, D. O. Mills, was taken at 52 Williams Street in the City of New York, pursuant to a stipulation between the above named parties.

This affiant further states that James F. Meagher appeared at said hearing, representing the defendant, the Peoples Gas Light and Coke Company, and W. D. Guthrie conducted the examination in behalf of the complainant.

This affiant further states that said James F. Meagher remained in court throughout the entire proceedings on both of the above mentioned days and that said Meagher never asked a single question, of either of the witnesses above named and that said Meagher never made a single objection to any question propounded to either of said witnesses, either on cross examination or direct exami-
257 nation and that the only thing that said Meagher did at said hearing was to produce certain books and papers of the Peoples Company at the request of the solicitors for the complainant.

This affiant further states that at the conclusion of the hearing in the above entitled cause on the 18th day of November, 1905, Mr. Guthrie stated that in view of the testimony given by Mr. Mills, it would become necessary for complainant to examine one, A. N. Brady.

This affiant further states that he never, during the cross examination or at any time, demanded that said Brady be produced as a

witness, that the proceedings had before Special Examiner Hervey W. Booth demonstrate the truth of this affiant's statement.

This affiant further states that Mr. Guthrie, counsel for the complainant, then stated that he could not get said Brady until the following Monday; that this affiant stated that it was agreed that all of said testimony should be finished on Friday and Saturday and that this affiant had made no arrangements to stay over until the next week and thereupon it was agreed between all the parties to this cause, that the examination of said Brady should be set for November 27, 1905.

DAVID K. TONE.

Subscribed and sworn to before me this 20th day of December, A. D. 1905.

WEYMOUTH KIRKLAND,
[SEAL.] *Notary Public*

(Endorsed:) Filed Dec. 20, 1905. Marshall E. Sampsell, Clerk.

258 And on to-wit: the sixteenth day of January, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of January 16, 1906.

26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO ET AL.

Ordered that this cause be set for hearing on January 31st, 1906.

259 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

No. 26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO and PEOPLE'S GAS LIGHT & COKE COMPANY.

Testimony taken before Hervey W. Booth, Esq., to whom this cause was referred as Special Examiner to take testimony, both at 52 William street, in the City of New York, and at 505 Monadnock Building, in the City of Chicago, on the dates hereafter specified.

NOVEMBER 17TH, 1905—11:00 o'clock, a. m.

Testimony Taken at 52 William Street, in the City of New York, on This Date.

Present: W. D. Guthrie, Esq., representing the complainant, James F. Meagher, Esq., representing the defendant, the People's Gas Light & Coke Company, David K. Tone, Esq., representing the City of Chicago.

260 MR. GUTHRIE: The first thing, Mr. Examiner, is to file the stipulation upon which we are proceeding. I would like the minutes to note that we file that stipulation.

And then I would like to offer in evidence a special act of the Legislature of the State of Illinois entitled "An Act to Incorporate the People's Gas Light & Coke Company, Approved February 12th, 1855," and I would ask a stipulation of counsel that a correct copy of such act is annexed to the amended bill on file in this Court.

MR. TONE: I presume it is correct. I have not compared it, but if there are any inaccuracies it may be corrected. Subject to any corrections, if inaccuracies, upon comparison are found to exist.

It is stipulated by all the counsel here present that the copy of said act attached to the amended bill of complaint in this cause is a true copy of the original act, and may be used as an exhibit in evidence herein.

MR. GUTHRIE: I also offer in evidence an act of the Legislature of the State of Illinois entitled "An Act to Amend an Act Entitled 'An Act To Incorporate The People's Gas Light and Coke Company,' Approved February 7th, 1865."

I would like the minutes to note a similar stipulation between counsel for the respective parties that a copy of such act is annexed as Exhibit B to the amended bill of complaint.

MR. TONE: I would like to know also if Mr. Meagher is stipulating to these things.

MR. GUTHRIE: I so understand.

Mr. MEAGHER: Oh, certainly.

Mr. TONE: Yes.

It is stipulated by all the counsel here present that the copy of said act attached to the amended bill of complaint in this cause
261 is a true copy of the original act and may be used as an exhibit in evidence herein.

Mr. GUTHRIE: I would like to offer in evidence the record on file in the office of the clerk of this court in the prior suit brought by the People's Gas Light & Coke Company, against the City of Chicago referred to in the bill of complaint, including the proceedings subsequently had in December, 1903, after the commencement of the present suit, by virtue of which proceedings the decree was amended *nunc pro tunc*.

Mr. TONE: I would like to ask if you have a copy of those proceedings here.

Mr. GUTHRIE: No. I have the record in Washington. That is all.

Mr. TONE: You have copies here, I suppose?

Mr. GUTHRIE: Oh, undoubtedly.

The EXAMINER: Do I understand that you offer the entire record and all the files in that case?

Mr. GUTHRIE: Yes.

The EXAMINER: Perhaps you had better identify the case by title, Mr. Guthrie.

Mr. GUTHRIE: I dictated it. The People's Gas Light & Coke Company *versus* the City of Chicago.

Mr. TONE: The briefs of all parties in Washington.

Mr. GUTHRIE: It will pad the record, but we will do that.

Mr. TONE: Yes, I would like to have them all included.

Mr. GUTHRIE: Then, had you not better offer those right here?

Mr. TONE: Well, I am agreeing to this upon the condition
262 that you incorporate the briefs also. Of course, I am not offering my proof now, but I suggest——

Mr. GUTHRIE: Well, I would like it to appear that Mr. Tone requested that in connection with the introduction of the record in the prior suit brought by the People's Gas Light & Coke Company against the City of Chicago, the briefs of counsel filed in that suit on its appeal to the Supreme Court of the United States should also be offered in evidence, which request was complied with by the complainant's counsel.

But you want all the briefs, or just simply our brief? What point do you want to prove by that, Mr. Tone, because probably we will——

Mr. TONE: Well, I wanted your brief, and if I should see fit to offer the rest of the briefs I want permission of doing it in the same way that you are making your offer here without producing certified copies.

Mr. GUTHRIE: We will consider that the briefs filed on behalf of the People's Gas Light & Coke Company in the Supreme Court of the United States will be produced, and the counsel for the City of Chicago may produce on the hearing any other briefs filed in that suit.

Mr. TONE: That is all right.

The EXAMINER: Will those briefs be furnished to be returned by the Special Examiner with his report?

Mr. GUTHRIE: We will give you a copy of our briefs. I will get them now. And the others—Mr. Browning's briefs, you can easily get a copy of that.

Mr. TONE: I presume so.

The EXAMINER: The complainant's briefs in the former case referred to may be marked Complainant's Exhibit No. 3.

263 Mr. GUTHRIE: And the record will not be marked at all.

The EXAMINER: The files of the Court will not be marked at all.

Mr. TONE: Well, there are two briefs, I understand, by the complainant. Will they both be given to the master?

Mr. GUTHRIE: Yes, we will fasten them together.

RICHARD REID ROGERS, a witness produced in behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. GUTHRIE:

Q. Please state your name, residence and profession?

A. Richard Reid Rogers. My residence is 251 West Eighty first street. I am a lawyer by profession.

Q. In January and February, 1903, were you associated with any firm of lawyers, and if so, with whom?

A. I was associated with the firm of Guthrie, Cravath & Henderson, of this city.

Q. Were they to your knowledge solicitors for the complainant in a suit brought by Mr. Darius O. Mills against the City of Chicago and the People's Gas Light & Coke Company?

A. They were.

Q. Do you remember whether or not you were requested in January or February of the year 1903 to do anything in connection with the subject-matter of that litigation?

A. I was.

Q. At that time had you any knowledge in regard to what member of the firm of Guthrie, Cravath & Henderson had special charge of the suit?

A. Mr. Guthrie had charge of the suit, but he was not here at the time.

264 Q. Do you remember where Mr. Guthrie was?

A. Mr. Guthrie was in Europe. He had gone there some time in January of that year.

Q. And you know the occasion for his going to Europe?

A. I understood that his health had been very much impaired at that time, and his doctor recommended a trip abroad.

Q. Now, will you please state what you were requested to do in connection with the matter?

A. I was requested by Mr. de Gersdorff, who is a member of Mr. Guthrie's firm and with whom Mr. Guthrie had left the matter in charge, to go to Chicago and attend the annual meeting of the People's Gas Light Company?

Q. Do you remember the date when such annual meeting was to be held?

A. I think it was along about the 11th or 13th of February.

Q. 1903?

A. Yes, somewhere along there.

Mr. GUTHRIE: We called upon you by notice to produce a proxy.

Counsel for the People's Gas Light & Coke Company produced the proxy requested by counsel for complainant.

Q. Will you please look at the paper now shown you (showing witness the proxy produced by counsel for the defendant Gas Company), and state whether or not that is the original proxy which was given to you at that time?

A. Yes, sir; that is the original proxy which I carried to Chicago with me.

Q. And what did you do when you went to Chicago?

A. I arrived in Chicago on the morning of the day of the annual meeting and proceeded to the offices of the company. I have forgotten the address. I arrived there shortly before eleven o'clock, the time set for the annual meeting.

Q. Did you attend the annual meeting?

A. I attended the annual meeting, yes.

Q. What, if anything, did you do with the proxy which had been given to you?

265 A. When the meeting was organized there was a call for proxies and I presented this original proxy on behalf of Mr. Mills.

Q. Did you then file it with the officers of the company present at such annual meeting of the stockholders?

A. I did.

Mr. GUTHRIE: I would like to offer that in evidence.

The EXAMINER: It will be marked Complainant's Exhibit No. 4.

Mr. GUTHRIE: I assume there is no objection for want of proof of Mr. Mills' signature.

Mr. TONE: No.

Mr. MEAGHER: I will state, Mr. Tone, I brought with me the stock ledger showing what his holdings were. Maybe an inspection of those——

The proxy was marked Complainant's Exhibit No. 4, and is in words and figures following, to wit:

"*Proxy to Vote.*

Know all men by these presents, That I, Darius O. Mills do hereby appoint William D. Guthrie, Paul D. Cravath, Edward C. Henderson, Carl A. de Gersdorff and Paul E. De Fere and each or any of them to be my Substitutes and Proxies, with power of substitution for me and in my name and behalf, to vote at the annual meeting of the stockholders of the *Peoples Gas Light and Coke Company*, to be held in the City of Chicago on the tenth day of February,

1903, and at any adjournment of such meeting, as fully as I might or could were I personally present.

In witness whereof, I have hereunto set my hand and seal the 31st day of January, 1903.

D. O. MILLS. [SEAL.]

Signed in presence of:

—— ——.

266 Pursuant to the powers contained in the foregoing proxy I hereby substitute Richard R. Rogers as proxy in my place. Dated Feb. 7, 1903.

CARL A. DE GERSDORFF.

In the presence of
THOS. W. SERVISS."

Q. Mr. Rogers, will you please state what occurred at the annual meeting of stockholders to the best of your recollection?

A. I had a resolution which I had taken with me which I had not prepared, the substance of which was to request the stockholders——

Mr. TONE: I would just like to find out if that was in writing.

The WITNESS: Yes.

Mr. TONE: I am objecting to secondary evidence of its contents, the document itself being the best evidence.

The EXAMINER: The objection may be noted.

The WITNESS (Continuing): The substance of which was to request the stockholders to direct the officers and directors of the company to institute a new suit respecting the gas ordinance in Chicago.

Q. What did you do with such written resolution?

A. I had the resolution, and shortly before the meeting was called I saw Mr. Meagher who was there as the attorney for the company, and I told him that I had come to the City of Chicago to represent Mr. Mills as his proxy, and I had a resolution that I wanted to present on behalf of Mr. Mills. I handed the resolution to Mr. Meagher. Mr. Meagher looked it over and told me an opportunity would be afforded to present the resolution. The meeting was called to order, and after it had been formally organized——

267 Q. I know, but did you leave the resolution with Mr. Meagher?

A. I left the resolution with Mr. Meagher.

Q. And did he ever return it to you?

A. He never did.

Mr. GUTHRIE: I call for the production of the original resolution left by Mr. Rogers with Mr. Meagher.

Mr. MEAGHER: I have not got it with me, Mr. Guthrie. I have however the record book here into which that resolution was copied. If counsel will accept that, it is here at their disposal.

Mr. TONE: I would like to have the original.

Q. Proceed as to what occurred at the stockholders' meeting?

A. I was going on to say that after the meeting had been formally organized and some of the formal steps customary at a stockholders' meeting had been taken, I then called up my resolution; stated to the Chairman that I had a resolution which I wished to present, and Mr. Meagher had it. Mr. Meagher said "yes," that he had a resolution that Mr. Rogers had brought out there representing Mr. Guthrie's office and Mr. Mills, and that he would read the resolution. He then read the resolution to the stockholders' meeting. At the conclusion of the reading of the resolution there was no seconds, and he said that he had stated to Mr. Rogers that he would have an opportunity to present the resolution, and suggested that some one second it. It was then seconded by some one—I don't recall by whom; Mr. Meagher then stated that there was already pending in the Federal Court a litigation involving substantially the same question, and that in his judgment further litigation would be inexpedient. I think he also added something, that he
268 had so advised the directors when a similar resolution had been brought before them. There was only one other stockholder who participated in the discussion, and that was a gentleman who was there attending himself, representing himself in person, and he said, as I remember, that he did not believe in too much litigation. I was then about to arise to make some remarks on it, when the chairman unexpectedly put the resolution, and I was the only one who voted in favor of it. The chairman then declared the resolution lost, and the meeting adjourned.

Mr. GUTHRIE: I have served notice to produce upon the defendant, the People's Gas Light & Coke Company, the minutes of the stockholders' meeting of February 10th, 1903. I would like to have those.

(In response to this request counsel for the defendant, the Gas Company, produced a book purporting to be a book containing the minutes of a meeting of the stockholders of the People's Gas Light Company.)

Q. Mr. Rogers, will you please look at the book which has been produced as the minute book of the stockholders of the People's Gas Light & Coke Company, and state whether or not the resolutions set forth on pages 29 to 33 are a correct copy of the resolution which you then offered as testified to by you?

Mr. TONE: That is objected to on the ground that the resolution itself is the best evidence and that the minutes of the resolution are only secondary evidence.

The EXAMINER: Let the objection be noted.

A. The minutes handed me do contain a correct copy of the resolution I presented there, the resolutions as read by Mr. Meagher.

269 Q. And do the minutes as shown to you contain a true statement or account of what occurred at the stockholders' meeting which you then attended?

A. Yes, sir. They are not quite as full as I have stated in my testimony, but what is stated in the minutes is correct.

Mr. GUTHRIE: I offer in evidence the minutes of the meeting of stockholders of the People's Gas Light & Coke Company, February 10th, 1903, as set forth in the minute book produced by the defendant company.

Mr. MEAGHER: I will, of course, search for that original resolution, Mr. Guthrie, and endeavor to find it.

The EXAMINER: It is agreed, Mr. Tone, that the copy may be substituted for the original record.

Mr. TONE: Yes, subject to having the record produced when called for.

Mr. GUTHRIE: Then the minutes will note that the copy of the minutes of the stockholders' meeting of February 10th, 1903, will be marked Exhibit 5.

Q. Did anything else occur, Mr. Rogers, at that meeting that you recall?

A. That is all. I have stated everything that occurred with respect to my resolution.

Q. Did you subsequently have any connection with Mr. Mills' affairs or this suit which he brought?

A. No; that was the only connection I ever had with this suit.

Cross-examination by Mr. TONE:

Q. How long have you been a member of Mr. Guthrie's firm?

A. Well, I am not a member of the firm. I have been connected with the firm about seven years.

Q. You had knowledge that Mr. Guthrie represented the
270 People's Gas Light & Coke Company in the Supreme Court of the United States?

A. Yes, I knew that he represented them.

Q. When did that employment commence, about?

A. Well, I don't know. My connection with this matter originated at the time that I went out to Chicago, and how long prior to that time he had been retained to represent Mr. Mills I could not say.

Q. Had he been retained to represent the People's Gas Light & Coke Company prior to that?

A. Well, I don't know about that.

Q. Did you ever do any work on the case in the Supreme Court of the United States?

A. No, sir; I never did.

Q. Your instructions were given to you by Mr. —— I didn't understand?

A. de Gersdorff.

Q. And he told you that a letter had been sent to the Board of Directors, did he?

A. Well, yes, he handed me a copy of the resolution that I introduced out there, at the time, explained in a general way what had taken place. That was the first knowledge of the matter I had in

any form. I would say that my part in this matter was rather unexpected. I think he intended to go himself, but was sick or something, and telephoned me upon Sunday and asked me if I could go to Chicago on the matter that he intended to go there upon himself. And that is how I happened to go to Chicago.

Q. Did Mr. de Gersdorff discuss with you the legal phases of this litigation of the People's Gas Light & Coke Company against the City of Chicago?

A. Yes, we talked it over.

Q. What did he say about it?

A. Well, we did not go into the legal questions that were involved specially, except in so far as they related to this resolution.

Q. State now fully everything that Mr. de Gersdorff said to you before you left?

A. Well, I remember distinctly the occasion of my seeing
271 him. It was Sunday, about twelve o'clock in the day and Mrs. de Gersdorff telephoned and stated, I think, that Mr. de Gersdorff was not feeling very well and there was an important matter that he would like to see me about, and I went to his house that afternoon. I then went in and saw him and he had this resolution which I took to Chicago. He explained to me that he had intended to go out there himself and present that resolution; that they thought that a new suit ought to be instituted either in the State Court or the Federal Court, which would raise certain questions which had not been raised by the pending litigation, and I took the resolution——

Q. Was anything further said?

A. That was practically everything that was said at that time.

Q. How long did this interview last?

A. Oh, I don't think it lasted over five minutes. He had the correspondence, I think, or copies of the correspondence relating to the resolution that had been offered at the directors' meeting, and I subsequently, the next morning, I remember, in order to advise myself more fully about the situation, read Judge Grosscup's decision.

Q. But now, on this Sunday talk, was anything else said other than what you testified to?

A. I don't recall anything else said. That was the subject of our conversation so far as it related to my going to Chicago.

Q. Merely that you were to go over there and present the resolution and that some action ought to be taken either in the State Court or in the Federal Court?

A. Yes.

Q. Do you recall anything else?

A. That is all that I recall, except I think there was some talk about the train that I should leave on to go to Chicago. In fact, he gave me the tickets and accommodations on the sleeper that
272 had been purchased for himself, I think, or someone else; anyhow, it was all together.

Q. And de Gersdorff was the only man who ever gave you any instructions as to where to go and what to do and say about this matter?

A. He was.

Q. And the only instructions that he gave you are the ones you have now testified about lasting about five minutes?

A. Yes. Well, now he handed me these papers at the time and told me to take the papers and look over and acquaint myself with the situation and go out there and present the resolution. And I did. And the next morning——

Q. Now, I am trying to find out what was said to you by anybody—you did not talk to Mr. Mills about it?

A. No.

Q. Before you went?

A. No.

Q. And you did not talk to anybody about this, except to Mr. de Gersdorff, is that right?

A. No one gave me any instructions or any information about the case. I may have asked about the office here for the papers or the books or something of that sort.

Q. Your sole instructions were given by Mr. de Gersdorff?

A. That is right.

Q. And the talk lasted about five minutes?

A. Yes, I should say so. It may have been ten minutes.

Q. And you have now related everything that was said there that you can remember?

A. Yes.

Q. What time did you reach Chicago?

A. Well, I got to Chicago about nine o'clock, I suppose, a little after perhaps.

Q. Before taking that up at Chicago will you again refresh your recollection and tell the Court if there was anything further that was said between yourself and Mr. de Gersdorff with reference to what you should do and say when you got to Chicago?

273 A. Well, I have stated substantially everything that I recall.

Q. Well, I don't want only substantially, but if you remember anything else I want it all?

A. That is about all that I can remember relating to this case.

Q. Well, that is about all. Do you remember anything else that was said there?

A. No, I do not. I do not remember anything else relating to my trip to Chicago except that.

Q. Or anything else about the Mills' suit, or about the People's Gas Light & Coke Company, or anything pertaining to it, do you recall anything further?

A. No, nothing except there was a general discussion as I stated before between him and me as to this resolution and what it was—I didn't know what it was even when I went there, and he simply stated to me as I have heretofore said that it was a resolution that Mr. Guthrie,—I think he said Mr. Guthrie,—had prepared to be presented there, and that he himself intended to go and present it, and that all that was necessary for me to do was to take it to Chicago; and I think perhaps he said I might acquaint myself with the situation as far as the litigation was concerned at the office. And

there was some talk about the train. I remember he gave me the tickets and the sleeping car accommodation.

Q. Were you acquainted with Mr. Meagher at that time?

A. I had seen Mr. Meagher here in this office, but I don't think I had very much of an acquaintance with him. I never had any business relations with him. I knew some members of his firm very well because some of the members of the old firm of Winston & Meagher I had been associated with in business matters, other business matters than this.

Q. In other words, Mr. Guthrie's firm and the old firm of Winston & Meagher had business relations together?

274 A. There was a receivership suit out there at one time in Ohio——

Q. Well, without going into any details I merely want to get clearly what you said?

A. Yes. They represented certain interests in that.

Q. Did you know Mr. Billings, the president of the People's Company?

A. Well, I was introduced to several gentlemen there at the meeting.

Q. No, but before you went there?

A. No, I did not know him before.

Q. Did you know anybody connected with the—or the stockholders or directors or the officers of the company, except Mr. Mills?

A. No, none that I recall.

Q. Had you met Mr. Mills before this?

A. No.

Q. Had you seen him about the office here before this, before you went to Chicago?

A. I had seen Mr. Mills.

Q. In the instructions from Mr. de Gersdorff did he tell you whether this suit should be instituted in the State Court or in the Federal Court?

A. No, he did not state where it should be instituted.

Q. Did he tell you to give any information to the counsel for the People's Gas Light & Coke Company as to where this suit was to be instituted that Mr. Mills was clamoring for?

A. No, because——

Q. Never mind any because. He did not say that?

A. No, he did not go into that at all.

Q. That was not discussed at all?

A. No. The resolution, as he stated to me, would explain the situation.

Q. Nothing was said about that. That is the point I am getting at?

A. To that extent.

Q. Did yourself and Mr. de Gersdorff have any talk before you left for Chicago as to what Court, whether State or Federal, the Mills' suit should be instituted in, or I mean, the suit that Mills was talking about should be instituted by the company?

275 A. None other than I have heretofore stated in my testimony.

Q. When did you arrive in Chicago?
A. I say sometime about nine o'clock.
Q. On what day of the week?
A. It was Monday, I think—no, it was Tuesday. I remember I left on Monday.
Q. What hour was the stockholders' meeting called for?
A. About eleven o'clock.
Q. Did you see anybody about this matter before the meeting was called?
A. I did not see anybody about this matter until I saw Mr. Meagher at the meeting prior to the convocation of the meeting.
Q. You didn't go into Mr. Meagher's office?
A. Yes, I went to Mr. Meagher's office.
Q. That is where the meeting was held?
A. No, the meeting was not held at his office.
Q. When did you go to his office?
A. I went there about ten o'clock.
Q. Did you see him there?
A. No, I did not see him there. I saw some one there and I asked him where the meeting was to be held, or how to get to the place, or something of that sort, and they directed me. Mr. Meagher was not at his office.
Q. And how long after you arrived was the meeting called to order, the stockholders' meeting?
A. Why, I suppose I was there about perhaps ten or fifteen minutes.
Q. Who was the first man you met there?
A. The first man I met was Mr. Meagher.
Q. You knew him, of course?
A. Yes, I knew him. I don't know that he knew me at the time. I don't think he did.
Q. What did you say to him?
A. I saw him and I said I had come out there from Mr. Guthrie's office. I had a resolution that I wanted to present, a resolu-
276 tion for a new suit to be brought. I represented Mr. Mills, had his proxy.
Q. What did Mr. Meagher say?
A. I handed him the resolution, as I said. He looked it over and said that an opportunity would be afforded to present the resolution.
Q. What did you say?
A. That was about all that was said about the resolution. We had some discussion about the litigation that was pending in the Federal Court at the time.
Q. State fully what that discussion was?
A. Well, as I stated, subsequently to seeing Mr. de Gersdorff I looked up, in order to know something about the situation out there, I looked up the state of the litigation. I read Judge Grosscup's decision.
Q. That was on the original People's case?
A. Yes, in which he dismissed the suit for lack of jurisdiction, and I thought that decision was clearly wrong. It seemed to me it was in conflict with certain precedents of the Supreme Court of the

United States with which I was familiar in other connections, and I remarked to Mr. Meagher—I remember we had a discussion about it—that I did not think that Judge Grosscup's decision was sound, and he seemed to think it was not either.

Q. In what respect did you tell him it violated the previous decision of the Supreme Court of the United States?

A. As I remember Judge Grosscup dismissed the suit for lack of jurisdiction upon the ground that there was no contract involved, and I had always understood the law to be that where the obligation of a contract was drawn in question that the court—the Federal Courts—were to take jurisdiction of the cause to determine whether or not there was a contract, and he had not done that. He decided there was not a contract, and then refused to take jurisdiction.

Q. And your idea was that assuming jurisdiction for the purpose of determining whether there was a contract right involved,
277 the Court would go ahead and decide that question and every other question involved in the case. Was that the idea?

A. Yes.

Q. And did you so tell Mr. Meagher?

A. The point was just this, that that was as far as Judge Grosscup's decision had gone. As I remember it—I have not read the decision since then, but my recollection was that he simply dismissed it on that ground, lack of jurisdiction ground.

Q. What did Mr. Meagher say to your argument?

A. Mr. Meagher did not seem to think the decision was sound either, but he did not go into the details as much as I did to him. He seemed to be very busy. He said, as I remember, that he did not think the decision would stand.

Q. He said he thought it would be reversed by the Supreme Court of the United States?

A. I don't know if he used that language, whether it would be reversed by the Supreme Court of the United States, but that was the idea that I got.

Q. He said that he did not think that the decision would stand?

A. Yes.

Q. Did he indicate in any other language what he meant by saying that—did he say anything further?

A. He did not think the decision of Judge Grosscup was sound on that point, and he also seemed to think that there had been a violation of the contract rights of the company.

Q. You were aware at this time that there was an injunction in force restraining the City of Chicago from enforcing this ordinance?

A. Yes.

Q. Was that discussed between you and Mr. Meagher?

A. No, not in that way. Mr. Meagher said though at the time that the situation out there was a somewhat delicate situation. I remember his making that statement to me, in connection with this litigation and other questions which he mentioned.

Q. He said it was delicate?

A. Yes.

278 Q. Did he go into details as to what he meant by this delicacy?

A. I understood that was in connection with the—a kind of a general statement to the effect that there was a feeling out there among the citizens of Chicago against the Gaslight Company.

Q. A kind of a local prejudice?

A. Yes, I think that is what you might call it.

Q. And he was afraid that the company could not get justice?

A. Oh, no, he did not say that.

Q. Well, he simply said there was a feeling of prejudice against the company there in Chicago?

A. Not in the Courts.

Q. How?

A. Not in the Courts. I did not understand him to say there was any prejudice in the Courts in Chicago.

Q. He did not say where it was, did he? He said there was prejudice?

A. He said there was a feeling there among the people, said the situation was a delicate situation. I am not sure that he used that expression, but that was the substance of what he said, as I remember it. I got that impression from my conversation with him.

Q. Well, did you remind him that that prejudice was just as much fanned into flame by fighting the original case in the Supreme Court of the United States as it would be by starting a new suit?

A. I did not discuss that question with him at all.

Q. Did you make any attempt to persuade him that the commencement of another suit would be a good thing after he had told you that he did not think the decision would stand?

A. You mean before or after the meeting?

Q. After Mr. Meagher had told you that——

A. I think I did state to Mr. Meagher that I did not see where that Federal Court suit involved the question of power of the council. I am not sure about that though. I don't know if I discussed it or not.

Q. You don't know if you made that statement or not?

279 A. No, I know I had that in my mind at the time.

Q. What did Mr. Meagher say to that?

A. Mr. Meagher and I had only a very brief discussion. I have almost stated all that transpired between us now. I have certainly stated the substance of what transpired. I was only there as I say some ten or fifteen minutes before the meeting. I had this talk with him. He introduced me to some other people who came in there at the time and he seemed to be very much occupied with other matters. I did not have any extended conversation with him.

Q. Did you ask him why it was that this public prejudice should be avoided at that particular time?

A. No, I did not ask him anything about that. As I said, I did not discuss that question with him at all.

Q. Did you tell him in what Court Mr. Mills wanted this suit prosecuted?

A. No, I did not mention that. I presume——

Q. Never mind what you presumed. Did you say anything about it?

A. No, I did not say anything about that, as to the Court in which that was to be brought, at all

Q. Did you and Mr. de Gersdorff discuss the question as to what Court the suit should be brought in?

A. No, we did not discuss it at any greater length than I have already stated.

Q. Did not Mr. Meagher, as a matter of fact, tell you that the reason why they did not want to institute the suit was because it would have to be brought in the State Court and there was such a prejudice in that Court that it was unwise to file any suit at that time?

A. No, I don't remember of Mr. Meagher making any remark like that.

Q. Then you and Mr. Meagher never discussed in what Court Mr. Mills wanted this suit brought?

A. No, our discussion related, as I stated to you a moment
280 ago, chiefly to this pending litigation in the Federal Court, Judge Grosscup's decision. That was the thing we talked about.

Q. You never outlined to him what kind of a suit you wanted brought—Mr. Mills wanted?

A. No.

Q. You never told Mr. Meagher in what Court you wanted that proceeding instituted, whether State or Federal?

A. No, we did not go into that question—did not have time.

Q. You did not have time?

A. No; that would require quite an extensive discussion—a greater knowledge of the case than I possessed at that time.

Q. You did not know enough about that to advise Mr. Meagher?

A. No, I did not. The only knowledge that I had been able to gather together was such knowledge as one would acquire from looking over Judge Grosscup's decision and getting general knowledge of the Federal Court litigation from the office papers and information gathered from the resolution I took out there.

Q. You had no instructions from Mr. de Gersdorff to tell any representative of the People's Gas Light & Coke Company as to what Court Mr. Mills wanted the suit started in?

A. No, no discussion with him about that.

Q. That was never discussed?

A. No.

Q. You never made any attempt to post either Mr. Meagher or any representative of the People's Gas Light & Coke Company as to what Court any suit should be brought in, or how they should proceed?

A. Why, no, I did not. That was a matter that I assumed——

Q. Well, you did not do it. That was all I am getting at. I don't want any asumption. I am merely getting at what you said. Did you talk with anybody else about this matter before the meeting?

A. I did not.

Q. Did you call on Mr. Billings, president of the com-
281 pany?

A. Well, I think Mr. Billings, if he was the president of the company—the chairman, was there, and I was introduced to the chairman of the meeting.

Q. But you did not say anything to him about this matter?

A. No.

Q. Nor the secretary of the meeting?

A. No, I had no conversation with these gentlemen at all. I was simply introduced to them. They simply asked me where I came from, and exchanged some remark about the weather—something of that sort. It was just as the meeting was about to convene.

Q. This gentleman you speak of who did not want any further —who said in the meeting that he did not want any further litigation, do you recall his name?

A. No, I remember he was rather an elderly gentleman. I remember where he sat in the meeting room.

Q. You made no speech in favor of this resolution at all?

A. No, I did not, but as I said a moment ago, I had it in my mind to get up after this gentleman made this remark and make a few remarks about it, and the chairman, very unexpectedly to me, put the resolution, and it was voted on right away.

Q. Did you move to reconsider it?

A. No.

Q. Did you tell the chairman that you wanted just a moment's forbearance so that you might express Mr. Mills' views on the question?

A. I did not.

Q. So that at the time this resolution was voted on the stockholders had no information except what was contained in the resolution itself?

A. And what Mr. Meagher stated there on that occasion.

Q. What did Mr. Meagher say?

A. I have already stated what he said.

Q. Yes, but will you tell me?

A. He said after the resolution had been seconded that there was already litigation pending in the Federal Court, and unfin-
282 ished, I think he said, involving those matters, and that in his judgment further litigation on the part of the company or any stockholder would be inexpedient and that he had so advised the Board of Directors when a similar resolution had been presented to them.

Q. He stated, did he, that while that litigation was pending in the Federal Court it was deemed inexpedient to begin another suit?

A. That is what he said. That is my remembrance of what he said. He may not have used the word inexpedient, but that certainly was the substance of what he said.

Q. And did he tell you that before the meeting assembled also subsequently the same thing?

A. Well, I gathered from what he said to me before the meeting

was had and from the statements that I have made you here, that that was his view of that. I don't know that he used the expression.

Q. Did you make any attempt to convince him that it was necessary for the protection of the rights of the stockholders that another suit should be instituted before the case was decided by the Supreme Court of the United States?

A. No.

Q. You did not discuss that at all?

A. I did not discuss that except our conversation before the meeting related chiefly to Judge Grosscup's decision.

Q. Did you examine the proxies of the other persons who voted there before the meeting assembled?

A. No, there was a great batch of them sitting there on the desk. I didn't examine them personally, of course.

Q. Did you look to see whether they were authorized to vote, whether they were in their legal form?

A. No.

Q. Did you make any attempt to check them up?

A. No.

Q. Who was the holder of those proxies?

A. Well, I don't know that. Some of the people who
283 were there, I presume the officers of the company. I did not examine the proxies.

Mr. TONE: I would like to ask Mr. Meagher if those proxies are here.

Mr. MEAGHER: No.

Mr. TONE: I would like to ask if they will be produced at the hearing in Chicago.

Mr. MEAGHER: Well, I don't know about that. There are several thousand of them. I don't know why we should do that. If there is anything you want to know for any specific prupose I will try to get it for you, but to produce the proxies of all the stockholders of that company——

Mr. TONE: At that particular meeting I think I am entitled to them.

Mr. MEAGHER: If you will tell me what you want, I will try and accommodate you by getting it if it is possible.

Mr. TONE: Well, I want the proxies at the meeting at which this resolution was filed.

Q. After this meeting had adjourned did you talk with either of these gentlemen in reference to the meeting?

A. No, I don't think I talked to any of those gentlemen except to tell them good bye. I left and came back to New York on the train that left at half past twelve.

Q. So that immediately after this meeting had adjourned you left and did not talk with anybody in Chicago concerning the mission you were sent for, after the meeting?

A. Not after the meeting was over.

Q. You did not see Mr. Meagher?

A. I saw Mr. Meagher after the meeting was over.

Q. You did not discuss this meeting any further?

A. No, I remember asking him about the train and he told me I could get back on the 12:30 train if I wanted to go.

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Q. Whom did you talk to after you got back?

A. I never had any extended conversation with anybody after I came back about the matter.

Q. Well, who did you first, connected with Mr. Guthrie's firm —who did you first talk to about this matter when you got back from this trip?

A. I think Mr. de Gersdorff asked me subsequently what I had done out in Chicago, and I told him I presented the resolution and it was voted down. That was all.

Q. What did he say?

A. He didn't say anything.

Q. And did you ever discuss this matter with him after that?

A. I never discussed the matter extensively with Mr. de Gersdorff, not at any time.

Q. Did you have anything to do with the preparation of the bill of complaint in this case?

A. No, I did not.

Q. Anything to do with the preparation of any of the briefs?

A. I did not.

Q. Anything to do with the preparation of the briefs in the People's case in the Supreme Court of the United States?

A. No.

Q. Against the City of Chicago?

A. No.

Q. And what you have testified to here is the only connection you have had with this suit?

A. Yes.

The EXAMINER: I suppose the requirements of the rule that the transcript of the testimony should be read over to the witness and signed by him will be waived, will it not, or do you insist upon that?

Mr. TONE: No, I shan't insist upon that, I should like to see the transcript of it before it is filed.

The EXAMINER: Oh, yes. Under the stipulation you have to be furnished with a transcript of the evidence.

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Mr. TONE: And I would like to have that before us——

The EXAMINER: And the evidence won't be filed until this hearing is completed in Chicago.

Mr. TONE: What I meant was before this hearing is discontinued in New York I would like to have a transcript if I can of the evidence, so that if anything is omitted it may be remedied.

Mr. GUTHRIE: Then I think we had better stipulate that the parties by their respective counsel or the complainant and the two defendants stipulate that the depositions when written out by the stenographer need not be read over by the Master to the witness, but that the witnesses may severally subscribe the same and forward

them to the Master. That they need not be signed in the presence of the Master.

After having read over and corrected the foregoing testimony the same is subscribed by me at New York, N. Y., in the presence of Francis J. Kearful.

RICH'D REID ROGERS.

DARIUS O. MILLS, the complainant, produced as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct examination by Mr. GUTHRIE:

Q. Please state your name, age, residence and occupation?

A. Darius Ogden Mills, age of eighty. My occupation is
286 attending to my own business affairs. Residence, New York.

Q. Are you a citizen of the State of New York?

A. Yes, sir.

Q. As well as a resident of the State of New York?

A. Yes, sir.

Q. You are the complainant in this suit?

A. Yes, sir.

Q. When did you first acquire any interest in or knowledge of the People's Gas Light & Coke Company of Chicago?

A. It is many years, and of course I would not recollect. But you have the memorandum, I think, that you got at the office showing that. I would not be able to state it.

Q. Have you caused to be prepared from your books a statement showing when you acquired interest in the People's Gas Light & Coke Company?

A. Yes, sir.

Q. And upon referring to that statement will your recollection be refreshed?

A. Yes, sir.

Q. Will you please state, Mr. Mills, when you first acquired any interest or holdings of the bonds or stock of the People's Gas Light & Coke Company?

A. This is a statement taken by my bookkeeper from my books, and I give it as such.

In December, 1893, I had a very small amount of bonds—only two thousand. In April, 1896, I had $150,000 bonds. Do you wish me to read the——

Q. Did you subsequently dispose of any of those bonds?

A. In January, 1901, I found that those bonds were reduced by $100,000, evidently by sale.

Q. And how many of those bonds do you now own?

A. Fifty-two.

Q. So that you have owned $52,000 face value of the bonds of the People's Gaslight & Coke Company ever since what year?

A. 1896.

Q. Now, Mr. Mills, as to your stock interest in the People's Gas

Light & Coke Company or in any of the preceding com-
287 panies which were acquired by it, will you please state when you first acquired any stock interest?

A. I find in 1893 my average holdings of stocks was 1,233 shares. Evidently there were some changes during the year. In 1894 my holdings were 1,733 shares. In 1895 none. In 1896 there was an average holding of 13,400. And in 1897 there was an average holding of 26,750 shares. That was the Chicago gas stock. That stock was changed into the People's gas stock, and in 1898 there was 26,150 shares of People's gas stock.

Q. That is your average holdings during the year 1898?

A. The average holdings, yes.

Q. As a stockholder of the company were 26,150 shares?

A. Yes.

Q. Will you please state the same with regard to subsequent years, to the present date?

A. 1899, 21,322; 1900, 19,850; 1901, 21,875; 1902, 22,755; 1903, 22,055; 1904, 25,169; 1905, 10,916. Present holding, 9,541. This is made out by my bookkeeper, and he figured it as an average holding.

Mr. GUTHRIE: I call for the production of the stock book or ledger of the defendant, the People's Gas Light & Coke Company.

Q. During all these years were you the registered holder of a large amount of the stock of the People's Gaslight & Coke Company?

A. That I do not remember, but I presume so.

Q. But you do know that you were the owner of the shares that you have testified to?

A. Yes, sir.

Mr. GUTHRIE: Can we dispense with offering the stock ledger? It will take a number of ledgers.

Mr. TONE: Yes, that will be all right. I would just like to take a look at a few of those entries there; if you will refer to the pages, I will inspect them, so as to be satisfied.

288 It is stipulated by and between the counsel for the respective parties that the complainant need not read in evidence the stock ledgers of the People's Gas Light & Coke Company showing Mr. Mills as the registered holder of the shares of the capital stock of the company; subject, however, to the right of the defendants or either of them to call for the production of the stock ledgers during the subsequent taking of testimony.

Q. Mr. Mills, do you remember that in October, 1900, an ordinance was passed by the City Council of Chicago in reference to the price of gas to be charged by companies in Chicago?

A. I remember of seeing it reported.

Q. And do you remember the substance of what that resolution of the City Council of Chicago provided?

A. I remember it provided for the reduction of the price of gas to seventy-five cents.

Q. From what price?
A. I think one dollar.
Q. Did you at the time have any knowledge of the pendency of a suit brought by the People's Gas Light & Coke Company to test the validity of that ordinance?
A. I knew after the passage that there was a suit.
Q. Can you now remember how you acquired that information.
A. I must have acquired that information from the public prints.
Q. Subsequently, Mr. Mills, do you recall acquiring knowledge of the result of that litigation so instituted by the People's Company?
A. Yes, I remember of knowing of the results of it.
Q. What, if anything, did you do after hearing the result of the People's suit in regard to your interest in the People's Company?
A. I remember calling on you for information. I was very much interested in the stock of the company—in my investment
289 there, in the safety of it, and I remember calling on you to inquire or to get your opinion as to what might be the result of the litigation.
Q. Do you remember at that time asking anybody, and, if so, whom, to protect your interest in the matter?

Mr. TONE: That is objected to as leading and suggestive.
The EXAMINER: The objection may be noted.

(Question read.)
Q. As counsel or otherwise?
A. I don't remember at that time.
Q. But subsequently?
A. Subsequently, yes, sir.
Q. And whom did you request to advise you in connection with the matter?

Mr. TONE: That is objected to as leading and suggestive.
The EXAMINER: Let the objection be noted.

A. Mr. Guthrie.
Q. That is, Mr. William D. Guthrie, of the firm of Guthrie, Cravath & Henderson?
A. Yes, sir.
Q. Mr. Mills, do you remember on or about December 16th, 1902, addressing a letter to the Board of Directors of the People's Gas Light & Coke Company?
A. I remember of addressing a letter to them, but I would not remember the date.
Q. Who prepared such letter?
A. It was prepared under your advice.

Mr. GUTHRIE: I call for the production of a letter of December 16th, 1902, from Mr. Mills to the Board of Directors of the People's Gas Light & Coke Company as called for by our notice to produce.
Mr. MEAGHER: We have been unable to find it. We have searched everywhere.

290 Q. Will you please look at the paper now shown you and state whether or not to the best of your recollection that is a copy of the letter to which you have referred?

Mr. TONE: That is objected to on the ground that no sufficient foundation has been laid for the introduction of secondary evidence, and that the original letter itself is the best evidence, and should be produced.

The EXAMINER: Note the objection.

A. I remember writing such a letter or sending such a letter.

Mr. GUTHRIE: I offer that in evidence.

Mr. TONE: The introduction of the copy in evidence is objected to on the ground that the original is the best evidence and that there has been no sufficient showing made as to an attempt to get the original into court, and no proof that it has been lost or destroyed such as would justify a court in introducing secondary evidence.

The EXAMINER: The objection will be noted. The copy of the letter in question will be marked Complainant's Exhibit 6.

The paper was marked Complainant's Exhibit 6, and is in words and figures following, to wit:

NEW YORK, *December* 16, 1902.

To the Board of Directors of the People's Gas Light and Coke Company.

DEAR SIR-: I believe you are aware that I am, and for upwards of five years last past have been, the largest stockholder of the People's Gas Light and Coke Company, and, of course, as such stockholder, I am vitally interested in the questions which
291 have arisen under the ordinance of the Common Council of the City of Chicago reducing the price to be charged for illuminating and fuel gas to 75 cents per thousand cubic feet.

I have caused to be submitted to my counsel the proceedings in the suit instituted in the Circuit Court of the United States at Chicago for the purpose of restraining the enforcement of this ordinance on the ground that it constituted an impairment of the obligation of the contract contained in our charter, together with a copy of the opinions of Judge Grosscup, and have informed such counsel that the case has been appealed to the Supreme Court of the United States and will probably not be reached for argument until some time during the year 1904.

I am advised by counsel that the interests of the People's Gas Light and Coke Company may not be adequately protected by the pending litigation for the following reasons:

First. That the bill in the pending suit was dismissed for want of jurisdiction in the Circuit Court of the United States for the Northern District of Illinois, and that in view of such disposition the Supreme Court of the United States may limit the point which it will consider on the present appeal to the naked question of jurisdiction.

Secondly. That the present suit does not involve any question as

to the power of the Common Council of the City of Chicago to reduce the charges of our company.

In view of the vital interest to all stockholders of these questions, I hereby request that you will cause to be instituted at the earliest practicable moment a new suit against the City of Chicago or otherwise, for the purpose of preventing the enforcement of this ordinance upon the ground that it impairs our charter contract and that the Common Council had no power to pass it. The facts stated in the amended bill of complaint in the pending suit I am ad-
292 vised fully show the necessity for a resort to equity for the protection of our rights.

It seems to me that the importance of this matter to the company and its stockholders cannot be exaggerated. If the ordinance is valid, the revenue of the company will be decreased one-quarter of the present gross income and very much more than this of the net income.

Yours truly,

D. O. MILLS.

Q. Did you subsequently, Mr. Mills, receive from the defendant People's Gas Light & Coke Company an answer to your letter?

A. Yes, sir.

Q. Will you please produce such an answer?

A. That was the answer I received (handing counsel a letter).

Mr. GUTHRIE: I offer that in evidence.

The EXAMINER: The letter referred to will be marked Complainant's Exhibit No. 7.

The letter was marked Complainant's Exhibit No. 7, and is in words and figures following, to wit:

New York Office of the People's Gas Light and Coke Co., 54 Wall Street.

NEW YORK, *January* 29, 1903.

D. O. Mills, Esq., 35 Wall Street, New York.

DEAR SIR: I beg to acknowledge receipt of your letter of December 16, 1902, which was submitted to the Board of Directors of the Company, and after conference with the counsel to the Company, the Board felt constrained under all the circumstances to decline to institute any further litigation at the present time, and
293 their action was evidenced by the following resolution, which I am directed to communicate to you viz.:

"*Resolved*, that this company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the Board of Directors of this company, dated the sixteenth day of December, 1902, for the reason that this board believes that for this company to institute further legal proceedings to contest the legality of the ordinance adopted by the common council of the city of Chicago October 15th, 1900, would excite public prejudice against this company, which at the present time it is deemed of great importance to avoid.

Be it Further Resolved, the secretary be instructed to notify Mr. Mills of the action of this board, at this meeting, and send to him a copy of this resolution."

Yours very truly,

H. W. OLCOTT,
Assistant Secretary.

Mr. GUTHRIE: Complainant served notice on the defendant the People's Gas Light & Coke Company to produce minutes covering the letter just referred to from Mr. Mills, and the minutes of the meeting of the Board of Directors of the People's Gas Light & Coke Company referred to in Complainant's Exhibit No. 7. Will the defendant please produce those minutes.

The defendant the People's Gas Light & Coke Company's counsel produced a book purporting to contain the minutes of the meetings of the Board of Directors of the People's Gas Light & Coke Company.

Complainant's counsel thereupon offered in evidence the
294 minutes of the meeting held January 29th, 1903, being set forth on pages 18 to 21 of such minute book.

It is stipulated between the counsel for the respective parties that a copy of such minutes shall be marked as an exhibit, with leave to any of the parties to call for the production of the original minute book for the purposes of comparison.

The EXAMINER: Copy of said minutes will be marked Complainant's Exhibit No. 8.

Q. After the receipt of the letter which you have just produced, dated January 29, 1903, do you recall executing a proxy to attend the meeting of the stockholders of the People's Gas Light & Coke Company, on February 10th, 1903?

A. I do not actually remember giving a proxy, but I give so many proxies I keep no record of them. I would not remember naturally giving a proxy.

Q. Will you please look at the paper now shown you, being Complainant's Exhibit No. 4, and state whether or not that is your signature and whether the paper refreshes your recollection as to giving a proxy?

A. I will say that is my signature, and I must have given the proxy over it.

Q. Do you recall, Mr. Mills, that subsequently and on or about June 6th, 1903, you verified the original bill of complaint in this suit on file in the office of the Clerk of this Court (showing witness the original bill marked "Filed June 8th, 1903")?

A. Yes, sir.

Q. And do you recall that subsequently you verified an amended bill on January 26th, 1905 (showing witness original amended bill of complaint marked "Filed February 1st, 1905")?

A. Yes, sir.

295 Q. Mr. Mills, do you remember after the filing of the amended bill of complaint your executing a bond in this matter?

A. Yes, sir.

Q. Do you remember—do you keep a copy of such bonds?

A. No, sir.

Q. Do you remember the purport—generally the purport of that bond?

A. I don't remember very distinctly about it.

Q. Do you remember what, if any, arrangement you made for sureties for such bond?

A. Some surety company.

Q. Did you make an agreement with some surety company indemnifying them for their liability as surety?

A. I think you must have made that agreement for me.

Q. Do you remember signing any paper to any surety company covering that subject?

A. I would not be positive about that without seeing the——

Q. Will you kindly look at the paper now shown you and state whether or not that refreshes your recollection?

A. Yes, sir.

Q. Is the paper shown you in your handwriting?

A. Yes, sir.

Q. To what extent does that refresh your recollection?

A. That I signed the bond to the security company.

Mr. GUTHRIE: I offer that in evidence.

Mr. TONE: That is objected to as hearsay and incompetent and irrelevant, not binding on the defendant, the City of Chicago.

The EXAMINER: The objection may be noted and the letter will be marked Complainant's Exhibit No. 9.

The letter was marked Complainant's Exhibit No. 9, and is in words and figures following, to wit:

296 Office of Mills Building, San Francisco, Cal.

Wm. D. Guthrie, Esq.

MY DEAR SIR: Enclosed please find signed the paper rec'd this a. m. The Surety Company retained my guarantee to them. Presuming this is all right,

Sincerely yours,

D. O. MILLS.

Q. Referring to Exhibit No. 9, just read in evidence, and to the bond which you have executed, now on file in the office of the Clerk of this Court, have you been indemnified in any way for the liability which such bond and agreement to the surety company purports to impose upon you individually?

A. No, sir.

Q. And are you personally liable for whatever liability may result upon such bond?

A. Yes, sir.

Mr. TONE: That is objected to as a conclusion of law and incompetent and immaterial.

The EXAMINER: Note the objection.

Q. Mr. Mills, at whose expense is this suit being conducted?

A. At mine.

Q. Have you any agreement—have you ever had any agreement

with the company in regard to the institution of this suit or in regard to the expense that you may incur in prosecuting this suit?

A. No, sir.

Q. Was this suit brought at the request of the People's Gas Light & Coke Company?

A. No, sir.

Q. Have you any agreement of any kind directly or indirecly, with the People's Gas Light & Coke Company or any one to
297 indemnify you personally against the expenses and costs of this suit?

A. No, sir.

Q. Mr. Mills, was this suit brought solely to protect your individual interest as a large stockholder in the People's Gas Light & Coke Company?

Mr. TONE: That is objected to as calling for a conclusion of law and of fact, and as incompetent.

The EXAMINER: The objection may be noted.

A. I think the complaint says in my own interest and other stockholders similarly interested, but it was brought without any agreement with any of the other stockholders.

Q. Was the suit brought to confer on the Court of the United States jurisdiction of a case which it would not otherwise have cognizance of?

Mr. TONE: That is objected to as calling for a conclusion and incompetent.

The EXAMINER: Note the objection.

A. I so understood it.

Q. Did you hear the question, Mr. Mills?

A. I so understood it, yes, sir.

Q. You understood what?

A. The question as put, if you will read it.

Question read.

Mr. TONE: Same objection as before noted.

A. Yes, sir.

Cross-examination by Mr. TONE:

Q. How long has Mr. Guthrie represented you with reference to your interest in the People's Gas Light & Coke Company?

A. Since 1902.

Q. What time in 1902?

A. I cannot remember the date.

Q. Well, as near as you can fix the time?

298 A. I should think it would be the latter part of 1902, some time in the latter part of 1902.

Q. December, 1902?

A. I could not say.

Q. Well, was it about the date of the letter addressed to the Board of Directors of the company?

A. That I would not remember.

Q. And you consulted Mr. Guthrie with reference to your interest before he wrote the letter to the Board of Directors of December 16th, 1902?

A. Yes, sir.

Q. You had? How long before that?

A. That I do not remember.

Q. Well, to the best of your recollection?

A. Well, I have very little recollection about it.

Q. Well, you can tell about how long, can't you?

A. I cannot tell any better about how long than I could about the time.

Q. Well, it was a week?

A. Well, it would be some time before.

Q. Well, how long do you mean by some time?

A. Well, sir, I could not say. And I would like to remark here that my memory is not as sharp as it used to be about dates and conversations, and so forth, so that if I appear not to know it is a defect of the memory.

Q. Had you seen Mr. Guthrie at all about this matter before you signed the letter of December 16th, 1902?

Mr. GUTHRIE: He has testified twice, Mr. Tone.

Mr. TONE: This is cross-examination.

A. Yes, sir, I presume so.

Q. You had?

A. Yes, sir.

Q. How many times had you seen him before that?

A. That I could not say.

Q. Had you been in his office before that?

A. Yes.

299 Q. How many times?

A. Perhaps not over twice.

Q. Not over twice before that? Who introduced you to Mr. Guthrie?

A. I don't remember it.

Q. How long before you wrote the letter of December 16th, 1902, were you first in his office?

A. That I do not remember, but it would be some time before.

Q. Well, a few weeks?

A. Oh, I should think I was in his office a year or two before that.

Q. About this matter, the People's Gas Light & Coke Company?

A. About the—inquiring about the suit and legal part of the business of the People's Gas Company. In other words, I got information from him to it.

Q. Was Mr. Guthrie at that time representing the company?

A. My impression is that he was.

Q. And you went to see him as a representative of the company at that time as to how the litigation was going along?

A. No, I had nothing to do with the company. I went on my own account.

Q. How did you come to go to him?

A. On my own account because I was—being so large a holder in

the company I was very much interested in the value of the property——

Q. But he has not been your lawyer?

Mr. GUTHRIE: Let him answer the whole question. He was answering, Mr. Tone.

Q. Do you want to say any more in that answer?

The WITNESS: No.

Mr. TONE: I thought he had finished.

Q. He had not been your lawyer before the matter of this Mills suit came up, had he?

A. No, sir.

Q. You knew he represented the People's Company?

A. I had an idea he was familiar with it, and I presume I must have thought he represented the company.

300 Q. And you went to him for that reason?

A. I went to him for the reason that I thought he had better information than any one else at the time.

Q. The letter of December 16th, 1902, was prepared by Mr. Guthrie, was it not?

A. Yes, sir.

Q. In his office?

A. I presume so.

Q. Dictated. You did nothing but sign it?

A. I shall have to see the letter in order to identify it. (After looking at Complainant's Exhibit No. 7). Yes, I did nothing but sign that.

Q. You signed the original of this, I take it, referring now to the letter of December 16th, 1902?

A. I think I did.

Q. You had nothing to do with the composition of it?

A. No, sir.

Q. When you first saw Mr. Guthrie in reference to this gas litigation, and at the time when he was representing the company, what did he say about your interest, if anything?

Mr. GUTHRIE: I object to the form of the question and as assuming that Mr. Guthrie represented the company, which fact has not been proven.

The EXAMINER: The objection may be noted.

A. I don't know that he had anything in particular to say about other interests. At the interview I am speaking of I was making the inquiries myself.

Q. You made inquiries at that time?

A. Yes.

Q. Before he was your lawyer?

A. Yes, sir.

Q. And what did he say?

A. In a general way he was very sanguine as to the result of the litigation.

Q. Well, tell the court what he said?

A. That I could not remember what he did say.

Q. He was sanguine of the result, you say?

A. Yes, sir, in a general way.

Q. Well, as near as you can remember, what was his lan-
301 guage?

A. Well, that I wouldn't remember.

Q. This was a year before the letter of December 16th, 1902?

Mr. GUTHRIE: I object to the form of the question as unfair and assuming what has not been testified to.

The EXAMINER: Note the objection.

A. The way the question was put to me, the interview we are speaking of was long before the commencement of my suit.

Q. How long was the first talk that you had with Mr. Guthrie about your interests in the People's Gas Light & Coke Company before December 16th, 1902?

A. I should say a year or two. I don't know how long it would be.

Q. A year or two before?

A. Yes.

Q. And then you merely came for the purpose of inquiring?

A. That is all.

Q. And then was the time Mr. Guthrie said he was very sanguine that it would come out all right?

A. He seemed to be very sanguine about the law. Yes, he seemed to be sanguine in reference to the—well, of course my inquiry to him would be in a general way as to the prospect *to* the city maintaining the seventy five cent—the prospect of the litigation over the seventy-five per cent. rate.

Q. And what was his reply?

A. He seemed to be sanguine that the company would maintain the rate that they held to then.

Q. That was what he said, was it?

A. That was the impression he gave me.

Q. Well, did he say anything on the subject?

A. That I could not remember. The conversation was general and I would not remember in any particular about it, with the exception that I came away with rather more confidence than I had before going to see him.

302 Q. Now, when did you next see him, how long after the next interview?

A. I think the next interview would be probably when it was decided to commence my suit.

Q. Your suit. And when was that?

A. That would be some time in 1902.

Q. About what time in 1902?

A. Well, some time the latter part of the year, I believe. I could not tell you.

Q. And where were you at that time? Where did you meet Mr. Guthrie?

A. I think at my office.

Q. In New York City?

A. Yes, sir.

Q. Did he come to see you at your office?

A. Yes, I think it was my office.

Q. And what did he say?
A. Well, that I could not remember.
Q. Well, as near as you can?
A. Well, at the time the point would be about commencing this suit. What he said I don't know, but the interview related to this suit and his conducting it entirely throughout.
Q. When was that with reference to this letter of December 16th, 1902?
A. It would be, I presume, some time before that?
Q. Some time before the letter of December 16th, 1902?
A. I presume so, but I could not remember that.
Q. Well, about how long before that?
A. I could not tell.
Q. Who suggested the idea that the suit should be commenced in this talk?
A. That I do not remember.
Q. Did he suggest it to you or did you suggest it to him?
A. That I don't remember. I remember having a conversation with somebody connected in some way with the company in reference to the matter, but I could not tell you who it was with.

303 Q. Now, after this second interview in which you decided to commence this suit, when did you next see Mr. Guthrie?
A. That I don't remember.
Q. Well, you saw him on December 16th, 1902, did you not?
A. I presume so.
Q. When the letter was written?
A. Yes, I think so.
Q. And was that the next time you talked with him in reference to this People's Gas Company matter?
A. That I don't remember.
Q. Well, did you have any interview between the one you testified about at your office and the time you signed the letter of December 16th, 1902?
A. I think I did.
Q. Where was that?
A. That would be in my office.
Q. And what was said at that time?
A. That I couldn't tell you. I do not remember it.
Q. Was anybody else present at any of these interviews?
A. Not that I remember.
Q. Anybody else present at any of them?
A. I do not remember anybody.
Q. Are you acquainted with Mr. Meagher, of Winston & Meagher?
A. Not that I know of. I may be.
Q. This gentleman sitting here?
A. Oh, I have seen Mr. Meagher, yes. But if I had been asked outside I should not have identified him.
Q. Do you know Mr. Winston, his former partner?
A. I don't remember. I know hundreds of people that I couldn't tell you the names.

Q. Now, what was said at the interview before December 16th, 1902, the one after the one which took place at your office?

A. A part of it would be that this case would be handled entirely by Mr. Guthrie. He would have the management of it, and I acted under his instructions entirely, and the result was I gave myself very little care about it afterwards. I had too much other business and other things to attend to to give this any individual care.

304 Q. That was the result of the talk, was it, that he should have charge of the suit?

A. Yes, sir.

Q. And conduct it——

A. All I did was to act under his instructions.

Q. And sign the necessary papers?

A. Yes, I presume that would be followed.

Q. Now, the letter of December 16th, 1902, where was that signed?

A. It must have been signed in my office, I think, I don't remember.

Q. How long after the interview you have testified about wherein it was agreed that he should have charge of this case was it that you signed the letter of December 16th, 1902?

A. That I do not remember.

Q. What is your best recollection?

A. I have not any recollection about it.

Q. A week or a month?

A. I have no recollection about it.

Q. At the time the letter of December 16th, 1902, was signed, it was at your office, is that true?

A. That is my impression.

Q. Did you have a talk with Mr. Guthrie at that time?

A. I presume I did. I do not remember.

Q. Have you any recollection on the subject?

A. No, sir.

Q. Was the letter already prepared when Mr. Guthrie came over?

A. Mr. Guthrie prepared the letter.

Q. A typewritten letter, was it?

A. That I do not remember.

Q. You do not recall whether it was in handwriting or typewriting?

A. No, sir.

Q. You did not write it in longhand yourself, certainly?

A. No, sir.

Q. And it was all prepared when Mr. Guthrie got over there, is that right?

A. That is my impression.

Q. Did you read it over?

A. I must have read it over, or I would not sign it.

305 Q. And you signed it. You made no changes in it?

A. No, sir; not that I recollect of.

Q. And as to whether the stockholders' rights would be adequately protected by the pending litigation or not, you did not know, did you?

A. I did not know anything further than the information I got from Mr. Guthrie.

Q. You depended entirely on him?

A. Yes; entirely on him after his taking the case.

Q. Did he tell you anything about his representing the People's Company?

A. I do not remember.

Q. Did he at any time tell you anything as to whether he represented the People's Company?

A. I don't know whether I got it from him or somebody else. My impression is that he did represent it.

Q. That was your impression when you first went to him?

A. Yes, when I first had an interview with him about this case.

Q. And that was your impression all the time after that?

A. After that, yes, sir; that is, that he represented the Gas Company in some form in another case, in a different way.

Q. But involving the question of this seventy-five cent ordinance?

A. Yes, it would all come to that.

Q. Involving the same ordinance, the same seventy-five cent ordinance?

A. Yes.

Q. Do you know Mr. Billings, President of the People's Company?

A. I have met Mr. Billings.

Q. Who of the stockholders of the People's Company who were stockholders in 1902 did you know quite well?

A. Well, there would be Flower, Governor Flower.

Q. Governor Flower?

A. Yes, and his brother.

Q. Do you know how many shares of stock he held?

A. No.

Q. He was quite a large stockholder, was he?

A. That is my impression.

Q. You knew him?

A. Yes.

306 Q. Very well?

A. Very well. And then there was Mr. Brady.

Q. He was another large stockholder?

A. I take it he was. I always supposed he was.

Q. Did you know anybody else of the stockholders?

A. I have not anybody else in mind now.

Q. Do you know Olcott, the Secretary?

A. Well, yes, I knew him by sight.

Q. But not intimately acquainted with him?

A. No, sir.

Q. Did you ever see any of the other stockholders and attempt to get them to help you out in having the company institute proper suits?

A. No, sir.

Q. Did you ever consult with them about this matter at all?

A. Yes, I consulted with one or two people about it, but I don't remember who they were.

Q. Of the stockholders?
A. Yes, sir.
Q. But you never attempted to get any of them to go to the stockholders' meetings and vote on these questions?
A. No, sir.
Q. Brady and Flower were both directors at the time you wrote the letter to the Board of Directors?
A. I think they were.
Q. And Knapp. Did you know Knapp?
A. No, I did not know Knapp.
Q. Brady resided here, did he, in New York?
A. Yes, sir.
Q. And Flower resided here?
A. Yes, sir.
Q. Is Flower still living?
A. No, sir.
Q. When did he die?
A. Oh, I don't remember; two or three years ago.
Q. Is Brady still living?
A. Yes, I believe so.
Q. You knew that Brady and Flower were directors in December, 1902, did you not?
A. Yes, sir.
Q. Did you know that Knapp was a director?
A. I don't know.
Q. Did you know Knapp personally?
A. I don't remember him.
307 Q. Is Mr. Brady still a director of the company?
A. I don't know. I presume he is.
Q. Is Mr. Knapp still a director of the company?
A. I don't know anything about Mr. Knapp.
Q. Did you mail the letter of December 16th, 1902, or Mr. Guthrie mail it?
A. I don't know.
Q. You have no recollection of anything but signing it, is that right?
A. Yes, sir.
Q. Did you get a reply to that letter?
A. I think I did.
Mr. GUTHRIE: It is in evidence, Mr. Tone.
Q. What did you do with the reply when you got it?
A. I handed it—it was in the office until Mr. Guthrie got it the other day.
I think I would like to change one remark there that attracted my attention.

Mr. TONE: I want to make an objection to the witness changing his testimony.
The EXAMINER: The objection may be noted.
The WITNESS: Well, the way he put the question whether I went to any stockholders to help me out on this case. I had conversation

with some of the stockholders in reference to that, but I did not go to any stockholders. In other words, all I want to correct is simply that I had conversations with some of the stockholders with reference to it.

Q. Did you make any reply to the letter of January 29th, 1903, being Complainant's Exhibit 7?

A. I think not. No, I don't remember making any.

Q. Did you read that letter at the time you got it?

A. I presume so.

Q. You note that this letter says, "The Board believe that for this company to institute further legal proceedings to contest the
308 legality of the ordinance adopted by the Common Council of the City of Chicago, October 15th, 1900, would excite public prejudice against the company, which at the present time it is deemed of great importance to avoid." I call your attention to that?

A. Yes.

Q. You saw that at the time?

A. I presume so.

Q. Did you make any reply to the——

A. No, sir; I think not.

Q. Did you talk to Mr. Guthrie about this letter of January 29th, 1903?

A. I don't recollect, but I presume I did.

Q. Did you discuss it with anybody else?

A. I don't remember discussing it with anybody else. I would not have occasion to, I suppose.

Q. You do not recall of talking with anybody except Mr. Guthrie about this letter of January 29th, 1903, being Complainant's Exhibit 7?

A. Not that I know, sir. I don't think I did.

Q. You did not talk with the president of the company?

A. No, sir.

Q. Nor with the secretary of the company?

A. No, sir.

Q. Nor with any of the directors?

A. No, sir.

Q. Nor with any of the stockholders?

A. I think not. That entirely went into Mr. Guthrie's hands to deal with. I did not give it further attention.

Q. Did you make any effort to find out what the public prejudice was that existed in the City of Chicago against the company?

A. Only so far as I read anything I could see in the newspapers.

Q. But you did not ask any officer of the company or director about what that popular prejudice was?

A. Not about the public prejudice, no.

Q. Did you ask Mr. Guthrie to find out what this public prejudice was that existed against this company of yours in Chicago?

A. I don't think I did, because I would not naturally need his opinion on that.

309 Q. You had no curiosity to know that?
A. Not through him.
Q. Nor through anybody else?
A. Well, yes, I was on an inquiry in reference to the general prosperity of the company so far as——
Q. But this public prejudice which the secretary of the company speaks of in the letter, Complainant's Exhibit 7, you never made any inquiry of anybody about that, did you?
A. I don't think I did.
Q. Did you attempt to find out from Mr. Guthrie or anybody else why it was that it was of great importance to avoid exciting public prejudice at the time this letter was written, being January 27th, 1903?
A. No, sir; I wouldn't naturally do that. I would get the general information. I would get through the papers.
Q. You deemed that sufficient?
A. To my mind.
Q. At the time when you signed the proxy authorizing Guthrie and others to appear for you at the stockholders' meetings, did you have any talk with Mr. Guthrie at that time?
A. I do not recall of having any. In fact, I do not know whether he got my signature to it or whether he sent somebody.
Q. You don't remember the circumstances under which this proxy was signed?
A. I remember the signing now of the proxy by seeing it, but I don't remember who brought it for signature.
Q. Had you ever attended any stockholders' meeting yourself of the People's Gas Light & Coke Company?
A. No, sir.
Q. You had sent your proxies before that?
A. I had given proxies, I believe.
Q. To whom did you give those proxies before?
A. I don't remember.
Q. You have some records, haven't you, of who you gave
310 proxies to before the stockholders' meeting of January, 1903?
A. I never keep any record of proxies.
Q. Who has represented you in your legal matters before that?
A. I had not required any legal advice before Mr. Guthrie.
Q. You had not?
A. Not in connection with the Chicago gas.
Q. And you don't know to whom you had sent a single proxy before that, is that right?
A. That is right. I do not remember.
Q. You had sent proxies?
A. That is my impression.
Q. Now after this stockholders' meeting of January, 1903, have you attended any of the meetings in person?
A. No, sir.
Q. Have you sent proxies?
A. Well, I presume so. If they had been asked for, I should have sent them. If the names appealed to me. But I have no recollection about proxies.

Q. You do not recall?

A. No.

Q. You never gave any proxies to Mr. Guthrie and Mr. Cravath to represent you at any stockholders' meeting other than the one of January 13th, 1903?

A. I think not. I have no recollection.

Q. Have you made any attempt to defeat the re-election of Mr. Knapp and Mr. Brady after the stockholders' meeting of January, 1903?

A. No, sir.

Q. You gave proxies to vote in favor of the re-election of Mr. Brady and Mr. Knapp, did you not?

A. I do not remember.

Q. At least you have made no attempt to secure the retirement of Mr. Knapp and Mr. Brady from the Board of Directors?

A. I did not take any interest in the matter.

Q. None at all?

A. No, sir.

Q. And you have sent no representative in person to attend any stockholders' meeting other than the one held in the winter of 1903, is that right?

A. Well, I did not really—yes, that is right.

311 Q. Have you made any attempt to find out what has been going on at any stockholders' meeting other than the one held in the winter of 1903?

A. Only in a very general way.

Q. And you have made no attempt to interfere with any other suit at any time except the gas litigation, have you?

A. No, sir, not to my recollection.

Q. And you did that at the request of Mr. Guthrie, is that right?

A. And the protection of my own interests. I should not have gone into it without.

Q. Do you remember a suit filed to forfeit the charter of the Peoples Company and of other companies on the ground that they had combined in violation of the trust law of the State of Illinois?

A. I have knowledge of that. I don't remember having knowledge of that except from the newspapers—the reports.

Q. Did you consult any lawyer about that?

A. No, sir.

Q. You knew that that was very important as affecting your interests, did you not?

A. Yes, sir.

Q. You left that matter entirely in the hands of the attorney for the companies, did you not?

A. I had nothing to do with it.

Q. You made no attempt to find out whether the representatives of the companies were protecting your interests or not?

A. I had confidence in them sufficient.

Q. Sufficient to believe?

A. Yes.

Q. Mr. Meagher was representing the Peoples Company at that time, was he not?

A. I believe so.

Q. And it was Mr. Meagher who also represented the Peoples Company at the time when this seventy-five cent gas ordinance was passed by the City Council of the City of Chicago, was it not?

312 A. I presume so.

Q. Didn't you have confidence that the company would protect your interests there?

A. So far as they could.

Q. You thought the company would protect them so far as they could?

A. Yes.

Q. But you thought you could do something that the company could not, was that the idea?

A. That was the idea. Well, something that the company did not propose to do.

Q. Did you ever get any idea before you consulted Mr. Guthrie that the company was not adequately and properly protecting your interests as a stockholder?

A. I had confidence in the company in that respect. If I had not I should have sold out.

Q. And you had that confidence until what time?

A. I always had that confidence.

Q. You have still got confidence that the company will protect your interests?

A. Yes, sir, so far as they can.

Q. Are you aware that there was a bill introduced and passed by the last Legislature of Illinois authorizing cities and villages to reduce the price of gas to seventy-five cents?

A. I remember something about that, but not the particulars.

Q. You saw it in the paper at the time?

A. Whatever it was.

Q. Now, that was of vital interest to your company, was it not?

A. Yes.

Q. Did you refer that matter to your counsel?

A. No, I don't know that I did. All those things came up to my mind rather more in a business way.

Q. You thought the attorneys for the company were sufficiently protecting your interests in that regard, didn't you?

A. Yes, sir.

Q. And the seventy-five cent ordinance passed on October

313 15th, 1900, is the only matter wherein you have not believed that your interests were being properly protected by the company?

A. Yes, sir.

Q. You are aware that the City Council of the City of Chicago have now under consideration an ordinance for reducing the price of gas to seventy-five cents, are you not?

A. I don't know whether—I don't know that I have now under——

Q. You know it was talked of that they were to take the matter up after the fall election, do you not?

A. If I did, I had not taken any notice of it, particularly. I don't know what they have done.

Q. You have not deemed it necessary to employ any counsel to look after your interests in that regard, have you?

A. No, sir.

Q. Mr. Guthrie does not represent you in that matter?

A. No, sir.

Q. Nor anybody else?

A. I suppose I may say in that connection that my confidence is a little weakened as to the general condition of things in Chicago. You will see that by the holdings of my gas stock. It is not half what it was.

Q. But that is not any loss of confidence in the lawyers of the People's Company, is it?

A. It is not any loss of confidence in their loyalty to the company.

Q. Nor in their ability and intention to do all that anybody can do to protect the company?

A. It is more political.

Q. Your loss in confidence is in the politicians of Chicago, rather than in the attorneys representing the company?

A. Yes, sir.

Q. You knew that Mr. Guthrie appeared in the People's case against the City of Chicago in the Supreme Court of the United States and made oral argument, do you not?

A. That was my understanding.

Q. Did he ever tell you anything about what took place
314 there?

A. Not specially; not that I recollect of particularly.

Q. The minutes of the directors' meeting of the 29th day of January, 1903, contains the following recital: "Thereupon the counsel to the company, who was present, stated that while appreciating the force of Mr. Mills' position, nevertheless, in his opinion, it would be impolitic if not imprudent to comply with Mr. Mills' request; that if this company were to commence new litigation, such action might arouse public prejudice against the company and result in additional adverse action by the Chicago Common Council against the company and its business. Among other things, counsel called attention to the fact that the present Mayor of the City of Chicago, who was a candidate for re-election at the general municipal election to be held in April, had stated in effect in a printed platform of principles recently issued to the citizens of Chicago on his behalf, that he, said Mayor, had reduced by twenty-five per cent. the price of gas to the City of Chicago, and the gas consumers in said city, and that he was therefore entitled to the favorable consideration of his fellow-citizens and to their suffrages at the coming municipal election. Counsel further stated that it might be seriously injurious to the best interests of the company to have such a question agitated, which the institution of new litigation would tend to create. Counsel advised the board that in his opinion the only safe course to pursue so far as practical was to defer action until the Supreme Court of the United States shall have finally decided upon the merits of the

case brought by the company, now pending upon appeal to that Court, notwithstanding that the result in the case might not be conclusive upon the question involved in this ordinance."

Did you know at the time when the answer was communicated to you by the People's Company of the action of the board
315 of directors that I have just now read which the counsel had stated to that meeting?

A. No, sir; I did not know anything about it.

Q. Did you ever know about it until today?

A. I never knew about it until you just read it.

Q. People's Gas Light & Coke Company has an office in the City of New York, have they not?

A. I believe they have, yes.

Q. Where is its office?

A. Its office is on Wall street, in the Central Trust Company's Bank, I think.

Q. Were you ever a director of this company?

A. I think not.

Q. Did you ever attend any directors' meetings?

A. Not to my recollection; no, sir.

Q. Where was your letter mailed to of December 16th, 1902?

A. I could not tell. I presume it was mailed according to direction. I suppose Chicago. But I could not tell you.

Q. You know that the directors' meetings were held here in New York quite frequently, do you not?

A. I did not know that.

Q. Did your counsel ever tell you anything about that?

A. No, sir.

Q. Did Mr. Guthrie ever tell you that he was going to make an attempt to get the board of directors to institute any other suit?

A. Not that I recollect of.

Q. Did he ever tell you what reasons the directors had given for their refusal to institute that you had complained of?

A. I do not remember.

Q. When the letter of January 29th, 1903, was received by you, you noticed that it was written from New York, did you not?

A. I did not notice particularly about that. I took it coming from——

Q. You knew that the secretary had an office here, did you not?

A. Oh, yes.

Q. Did you ever go to the New York office to find out
316 from the secretary what that matter was that would make it unwise to bring any other suit?

A. No.

Q. Did you make any attempt to find out what directors had voted against your proposition?

A. No, sir, I turned that over entirely to Mr. Guthrie.

Q. Did you ask Mr. Guthrie what directors have opposed the bringing of the suit that you favored?

A. I don't know that I did particularly.

Q. Did Mr. Guthrie ever tell you anything about what directors were opposed to it?

A. No.

Q. Did he ever tell you whether he had inspected the minutes of the board of directors?

A. No, sir.

Q. Did he ever tell you whether he had been present at that meeting, or not?

A. No, sir.

Q. How often did you see Governor Flower at about that time?

A. Well, during his lifetime I used to see the Governor quite often, but it would be at his office.

Q. How near your office was Governor Flower?

A. He was over on Broadway, and my office is on Broad street.

Q. Did you have any other business dealings—I don't want to inquire what they were, but you were interested in other matters together?

A. Oh, yes, I knew the Governor very well, had more or less business together.

Q. You would call on him very frequently?

A. Well, occasionally.

Q. Did you attempt to find out anything about this action of the board of directors from him?

A. I don't know about that particular thing, but I was frequently in conversation with him in reference to the company and the general business of the company.

Q. And the policy of the company?

A. Not so much the policy as the general business of the company.

Q. But this particular matter, the commencement of this
317 suit, you do not recall having any talk with him about?

A. No, I do not know whether he was alive at that time.

Q. He was present at this meeting according to the minutes?

A. He was, eh?

Q. That is what it recites.

Mr. MEAGHER: Now, I wouldn't say that. That is another Flower. That is Anson R. Flower. I think Governor Flower was dead at that time.

The WITNESS: I am inclined to think he must have been dead at that time.

Q. Who was A. R. Flower?

A. He was a brother of the Governor.

Q. You knew him also?

A. Yes.

Q. Is he still living?

A. Yes, sir.

Q. And he is still a director of the company?

A. I don't know.

Q. He was the last you knew of him?

A. Yes.

Q. You have never known of any successor being elected?

A. No, not to my knowledge.

Q. You were quite as intimate with him as with the Governor?
A. Hardly.
Q. Well, you saw him a good many times?
A. Oh, yes.
Q. Did you ever attempt to find out from him why your demand that a suit be instituted had been turned down by the directors?
A. No, sir.
Q. You never attempted to find out from Mr. Flower, who was your director, anything about the public prejudice that would be excited against the company if another suit was started?
A. The only relations I would have with Mr. Flower would be as to the general prosperity of the company and their business.
Q. He was General Flower?
A. No, I say the only conversation or anything that I would elicit from him would be in reference to the business of the com-
318 pany and not in reference to its policy or——
Q. What was his first name?
A. A. R. Flower. And Governor Flower was—what was his given name?
Mr. MEAGHER: Roswell P.
The WITNESS: Oh, yes, Roswell P.
Q. Now, you and A. R. Flower were friendly?
A. We are still, yes sir, quite so, very much so.
Q. And you and Brady were friendly?
A. Yes.
Q. And are so?
A. Yes, friendly now.
Q. And you agree on the business policy of the company?
A. I don't take enough interest in the business policy of it really to be a very good judge of it, except in a general way.
Q. But you have had no difference with either of them on any question of policy?
A. No, sir, had no occasion to have.
Q. You have made no attempt at any time to suggest to either Brady or Flower or anybody else that the company should discharge Mr. Meagher, its present counsel, and employ anybody else?
A. No, sir.
Q. You have made no complaint at any time to any of the directors other than what is contained in the letter that they were not properly protecting the company's interests?
A. No, sir.
Q. The only complaint that you signed in the present case was prepared by Mr. Guthrie, was it not?
A. Yes, sir.
Q. Where did you get your information that was contained in that bill in reference to the passage of the ordinance and all of the documentary matters that are recited there?
A. I must have got that information very largely from the newspapers and possibly some of it from Mr. Guthrie.

At this point an adjournment was taken until 10:30 a. m., November 18th, 1905.

319 NOVEMBER 18TH, 1905—10:30 a. m.

Met pursuant to adjournment.
Present as before.

D. O. MILLS, resumed the stand, and his cross-examination was continued by Mr. Tone as follows:

Q. What surety company was it that signed the injunction bond in your case?
A. What surety company?
Q. Yes.
A. My impression was that it was the surety company in Chicago, but I don't——
Q. Do you know the name of the surety company?
A. I did know it, but I don't remember it.
Q. Had you done any business with that surety company before?
A. No, sir.
Q. Did you know any officer or agent of the surety company that signed that bond?
A. I did not.
Q. Did you yourself make the arrangement about the signing of the bond?
A. No, sir.
Q. Who suggested the surety company to sign this bond?
A. I don't know, unless it would be Mr. Guthrie. I don't know.
Q. What premium did you pay to the surety company?
A. Mr. Guthrie attended to that.
Q. Do you know how much you paid out for premium?
A. My impression was $200.
Mr. GUTHRIE: I have the bill, Mr. Tone.
The WITNESS: Mr. Guthrie attended to it.
Q. So that you know nothing about the details of this at all?
A. No, sir, any more than——
Q. The surety company Mr. Guthrie selected made all the arrangements?
A. Yes, and I suppose he charged my account.
Q. How much money have you paid out for expenses and counsel fees in this suit since it was started up to the present time?
320 A. I have paid $5,000.
Q. When did you make those payments?
A. I do not remember the date.
Q. When did you make the first payment?
A. I made it in one payment. I paid it to Mr. Guthrie.
Q. When did you pay it to Mr. Guthrie?
A. I don't remember.
Q. Well, you have some idea of whether it was after the suit was started or before, haven't you?
A. I presume it would be after the suit was started.
Q. How long after?
A. I don't remember really. My books will show the date.
Q. Have you any arrangement with the People's Company that you were to get back any part of this money?

A. No, sir.

Q. And have any other stockholders joined with you in this suit?

A. I have received a contribution from a stockholder.

Q. I did not understand.

A. I have received a contribution from a stockholder.

Q. What stockholder contributed?

A. Mr. Brady.

Q. Mr. Brady? How much did Mr. Brady contribute?

A. Mr. Brady sent in to the office $5,000 without saying particularly what it was for, but I took it to be to assist in this case. I had charged the $5,000 long before, or months before to my own account, and when this money came in I gave my personal account credit for it. That is the only sum.

Q. Is Mr. Brady a party to this suit?

A. No, sir.

Q. What is Mr. Brady's full name?

Mr. MEAGHER: Anthony N.

Mr. TONE: I would like to see the minutes of the directors' meeting that were offered in evidence yesterday.

321 Mr. MEAGHER: I have the copies for you. I have not got the book here.

Mr. TONE: May I see the copy, then?

Mr. MEAGHER: Certainly.

Mr. TONE: I stated that I would like to have the original record book kept here until we adjourned.

Mr. MEAGHER: I did not so understand it. However, I will get it. There is the copy of the record (handing counsel a paper.)

The papers produced by the counsel for the Gas Company purporting to be copies of the minutes offered in evidence were marked respectively Exhibits Nos. 8 and 5; the minutes of the stockholders' meetings were marked Exhibit 5 and the minutes of the directors' meeting were marked Exhibit 8.

Q. When did you get this remittance of $5,000 from Anthony N. Brady?

A. It must have been some months after I——

Q. You paid out your money?

A. After I paid Mr. Guthrie's bill.

Q. Was there a letter accompanying it?

A. No, sir.

Q. Was there any explanation?

A. No particular explanation.

Q. Well, you say no particular——

A. I don't think there was any explanation except in some way I understand it was a contribution on account of the expenses of the suit?

Q. This was a check, was it?

A. A check.

Q. And who was this check signed by?

A. My recollection is it was signed by Anthony N. Brady—his own check, Mr. Brady's own check.

Q. And payable to whose order?

A. I presume it must have been payable to my own order, perhaps. I don't remember that. The check must have gone through the bank.

322 Q. And was there any letter inside of it at all?

A. No, sir.

Q. Nothing of any kind which would be of explanation?

A. No, sir.

Q. Just this check for $5,000?

A. Yes, sir.

Q. Was this about Christmas time?

A. I think not. I don't think it was Christmas at all.

Q. It was not? Well, did you have a talk with Mr. Brady after this?

A. I think I had some talk with him before, and that might have suggested it.

Q. How long before that did you have a talk?

A. Oh, I don't know, and I don't remember any particular talk, but it is my impression I talked with him in reference to the case. I naturally would talk with him, because he was a stockholder almost equal to my own interest, and I considered that his interest—individual interest, was perhaps equal to mine. He was perfectly entitled to contribute—I would consider that he was perfectly entitled to contribute to the expenses of the case.

Q. Mr. Mills, I would like now to have you fix the date when you got that check?

A. I can fix it on my books. The books show it.

Q. Could you get your books over here by telephoning for them?

A. Yes.

Q. I would like to get this date fixed when you got this $5,000 check from Mr. Brady?

Mr. GUTHRIE: Do you want some one to telephone to your office?

The WITNESS: Yes, but I don't know as I have the number.

A CLERK: I have it.

The WITNESS (Addressing the clerk): Will you telephone to Mr. Graff to bring over his ledger and journal showing my personal account of 1900—how long back would that be—1902?

323 Mr. TONE: That would be 1903, I should think, possibly 1904.

The WITNESS (continuing): Showing my personal account for 1904. Bring over his ledger and journal. I don't know—it wouldn't take me five minutes, but I had better go—to be sure to get them here, I had better step over.

Mr. TONE: I don't want to put you to any unnecessary inconvenience, but I would like to get this date.

Mr. GUTHRIE: Your bookkeeper would probably be able to fix it. Shall I send Mr. Kearful over? That would be the best way?

The WITNESS: Yes.

(Mr. Guthrie then instructed a clerk to go to the office of Mr. Mills and ascertain the information required.)

The WITNESS: You will find that both those entries went into my

personal account. There is a difference of two or three months, something of that kind.

Q. On December 16th, 1902, you wrote this letter addressed to the board of directors of the People's Gas Light & Coke Company, a copy of which has been produced here, did you not?

A. Yes, sir.

Q. On January 16th, 1903, being a month thereafter, had you received any reply to that letter?

A. Unless that is the letter that informed me they did not propose to——

Q. That is dated January the 29th, 1903?

A. I don't think I received any others.

Q. On January 16th, 1903, you had received no reply?

A. No, sir, not that I recollect.

Q. Did not you think it was strange that a business letter of the importance of the one that you sent to the board of directors had not even been acknowledged a month after it has been mailed to the directors?

A. I did not think it very strange. I did not care about
324 an answer. I did not regard it especially.

Q. You did not care about an answer?

A. Well, that is my impression. I don't know what would be my idea about that.

Q. Why did you not care about an answer?

A. Well, perhaps I could tell by looking at the letter. Have you got the letter there? I may have done that. I don't know. I don't remember. (After looking at the letter.) Well, I naturally supposed if there would be any answer it would go to Mr. Guthrie.

Q. You supposed it would go to your lawyer?

A. Oh, I don't know.

Q. Your lawyer's name was not signed to that, was it?

A. Not that I know of. I think not. It don't seem to be.

Q. And then you would not suppose they would write to your lawyer?

A. No, I did not think it was strange.

Q. You said a moment ago you did not expect any answer. Why didn't you expect any answer?

A. I merely made that answer in place of saying I didn't know.

Q. You have an office in New York City?

A. Yes, sir.

Q. What number is it?

A. It is Mills Building, Broad street.

Q. How far from 54 Wall street is it?

A. Well, I never paced it.

Q. Oh, about?

A. It is not very far.

Q. We want to get that in the record. Other people may not know what you know about it?

A. Well, I suppose 54 Wall street would be in the neighborhood of a quarter of a mile.

Q. A quarter of a mile?

A. Perhaps.

Q. From your office. Did you go over to the New York office of the People's Gas Light & Coke Company and try to find out if your letter of December 16th, 1902, had been received by
325 the company?

A. I don't think I did.

Q. Did you send anybody over there?

A. I think not.

Q. Did you make any attempt in any way to find out why your letter of December 16th, 1903, had not been answered up to January 28th, 1903?

A. I don't remember.

Q. Did you go and tell Mr. Guthrie, your lawyer, that it was strange that the company would not answer a letter of that importance?

A. No, sir.

Q. Did you talk to Mr. Brady, the director, about it?

A. Not to my recollection.

Q. Did you talk to Mr. Flower, the director, about it?

A. I don't remember talking to him. I presume the only one I talked to about it was Mr. Guthrie.

Q. What is Mr. Brady's full name—the director?

A. I think it is Anthony N.

Q. Anthony N. Brady?

A. Anthony N. Brady.

Q. Where does he live?

A. I don't know.

Q. He lives in New York City, does he?

A. I think so. I don't know the number of his house.

Q. What business is he in?

A. He is a capitalist, and I should not think he was what you would call in business, with the exception of attending to large investments or holdings he has in companies. That would be my impression of him.

Q. How old a man is Mr. Brady?

A. That I could not tell.

Q. How long have you known him?

A. Oh, I have known him quite a number of years.

Q. How many years?

A. I don't know. I don't remember.

Q. Well, about how many?

A. Well, about—I couldn't tell you. Quite a number of years.

Q. How long have you had an office in New York City?

A. Twenty-five years.

326 Q. What portion of that time have you known Mr. Brady?

A. Oh, I could not say. Quite a number of years.

Q. Known him ever since you became a stockholder in the People's Gas Light & Coke Company?

A. Perhaps not ever since. No, I should think not.

Q. Have you known him for the last ten years?

A. I should think I had for probably ten years.

Q. And you are on speaking terms with him?

A. Very friendly terms.
Q. Always have been very friendly?
A. Always have been very friendly ever since I have known him; not intimately.
Q. But friendly?
A. Friendly.
Q. You and he are interested in any other business enterprise together?
A. I don't know that we are. We may be. Oh, I think we are stockholders.
Q. In other companies?
A. Not very much.
Q. You were well acquainted with him in December, 1902?
A. Yes.
Q. And he was frendly to you at the time?
A. Yes.
Q. Where was his office at that time?
A. I think his office was over in the Central Trust.
Q. How far from your office is that?
A. Well, that would be a quarter of a mile nearly.
Q. You had been to his office before December, 1902, a number of times, had you not?
A. Oh, yes, I think so, several times.
Q. He had been at your office before that a number of times?
A. Not many times.
Q. But he had been there sometimes?
A. Yes.
Q. When did you first have any talk with Mr. Brady with reference to wanting—well, in reference to this seventy-five cent gas litigation in Chicago?
A. That I would not remember.

Q. Did you have any talk with him before your letter of
327 December 16th, 1902, was mailed to the board of directors?
A. I don't know that I did about that.
Q. Have you any recollection on the subject at all?
A. No, sir; not particularly.
Q. Did you have any talk with him after the letter of December 16th, 1902, was mailed and before the stockholders' meeting in February, 1903, in reference to the gas litigation?
A. Not that I remember.
Q. Did you have any talk with Mr. Brady between the date of the stockholders' meeting in February, 1903, and the time you commenced your suit against the People's Company and the City of Chicago in this case, in June, 1903?
A. The case was commenced in 1902, was it not?
Q. 1903.
Mr. GUTHRIE: The suit was begun June 8th, 1903.
The WITNESS: 1903. Well I wouldn't remember.
Q. Did you have any talk with Mr. Brady at all in reference to this gas litigation before you commenced your suit against the City of Chicago and the People's Company in this case on June 8th, 1903?

A. I don't remember having any talk with him.

Q. Did you have any talk with him about this suit after it was commenced at any time?

A. I don't think I did that. I may have had some talk with him, I know——

Q. What is your best recollection now? Did you or did you not have any talk with him about this suit in this case of Mills *vs.* The City of Chicago at any time after June 8th, 1903?

A. I think I had some talk with him, but it was not very much.

Q. When did you have that talk?

A. That I would not remember.

328 Q. Where did you have that talk?

A. That I would not remember.

Q. Did you go to see him or did he come to see you?

A. Oh, I have been in his office and he has been in mine, but I would not remember about——

Q. Who was present at the time this talk took place that you had about this suit?

A. Oh, I don't think I had much talk about it. I don't think probably anybody.

Q. Well, now, did you ever have any talk with Mr. Brady at all about this suit of yours against the City of Chicago and the People's Gas Light Company?

A. I presume I must have had some talk with him, but I have no recollection of what it was.

Q. You have no recollection of what it—time or place?

A. It could only be talks that we were in joint interest, and it would not be a serious talk particularly about it.

Q. Well, when did you have the talk that you and Mr. Brady were in joint interest in this suit?

A. I never had any talk with him that we were in joint interest. We both knew that we were large stockholders in the company. We are not in any other sense jointly, I take it.

(At this point a gentleman entered the room and handed Mr. Mills a paper, which he handed to counsel for the city.)

Q. When did you receive the $5,000 check from Mr. Brady?

A. May 14th, 1903, check A. N. Brady, $5,000.

Q. And when did you pay Mr. Guthrie the $5,000 fee?

A. The 21st of January, 1903.

Q. Did you have any talk with Mr. Brady about this suit before you received this check of $5,000 from him?

A. I don't know that I did.

Q. You don't remember about having any talk with him?

A. Not about the case. I don't remember whether I did or whether I did not.

329 Q. Do you know how many shares of stock Mr. Brady owned at the time in the People's Gas Light & Coke Company?

A. I did not know how many he owned. I only understood—I have understood he was the second largest holder.

Q. The second largest?
A. Yes.
Q. You were the largest holder at the time?
A. At that time I was the largest. And I understood he was the second, and that he was a very large holder in the company.
Q. And you and he together had practically a controlling interest in the shares of stock?
A. Oh, no, not by a good deal.
Q. Mr. Flower was quite a heavy holder of stock?
A. I think he was at times.
Q. Both the Governor and A. R. Flower?
A. I don't know about A. R., the house there—their customers and themselves were very largely interested.
Q. The customers of the Flower house?
A. Yes.
Q. A. R. Flower was a stock broker?
A. Yes.
Q. And between the customers that Mr. Flower represented as a stock broker and the holdings of Mr. Brady and of yourself you had a controlling interest?
A. I should think not, but I don't know.
Q. Mr. Flower was also a friend of Mr. Brady's, was he not?
A. Yes, I think so.
Q. You never knew of any disputes between them?
A. No, sir.
Q. Any quarrels or anything?
A. Never knew of any.
Q. I read you the following from the minutes of the board of directors of the People's Gas Light & Coke Company of January 29th, 1903. After referring to your resolution to have another suit instituted in reference to the seventy-five cent gas, the minutes of the board of directors recite:

"The matter was discussed at length, and the following res-
330 olution offered by Mr. Brady, seconded by Mr. Flower, on being put by the Chair, was unanimously carried: 'Resolved, This company declines to accede to the request of Mr. D. O. Mills contained in his communication to the board of directors of this company dated the 16th day of December, 1902, for the reason that this board believes that for this company to institute further legal proceedings to contest the legality of the ordinance adopted by the Common Council of the City of Chicago dated October 15th, 1900, would excite public prejudice against this company, which at the present time it is deemed of great importance to avoid.

"Be it further resolved that the secretary be instructed to notify Mr. Mils of the action of this board at this meeting and send him a copy of this resolution."

Did you think it was strange that Mr. Brady, who was opposed to any further suits being started, should send $5,000 to you to help carry your suit on?
A. No, I did not think it strange.
Q. You did not think that was strange?

A. I did not know anything about the resolutions until *until* you read them with the exception of the letter I got from them.

Q. Well, does it not look rather strange to you now?

A. No, I don't think it does. It is perfectly explainable.

Q. Will you explain it?

A. Mr. Brady may have thought that—he may have thought that the suit would be for the benefit of all the stockholders.

Q. I did not——

A. He would think that the suit was intended to bind all the stockholders.

Q. Mr. Brady did?

A. He would naturally think so. I don't know what he did think.

Q. When he sent the $5,000?

A. I don't know what he thought when he sent the $5,000.

331 He evidently thought that he ought to contribute.

Q. But do you know why he opposed the commencement of the suit by his resolution and vote on the board of directors on January 29th, 1903?

A. No, sir; I don't know.

Q. And do you know why he changed his ideas and sent you this check in May, 1903?

A. I could not say that.

Q. Did you ever have any talk with A. R. Flower about this $5,000 check?

A. No, I think not.

Q. Did you ever tell Mr. Guthrie about it?

A. It is only lately at any rate that I have told him about it.

Q. When did you first tell Mr. Guthrie of the receipt of this $5,000 check from Mr. Brady?

A. I believe it is since I got notice of this hearing.

Q. And up to that time you had never informed Mr. Guthrie?

A. Never informed him.

Q. Of the receipt by you of the $5,000 check from Mr. Brady?

A. I took that as a personal matter. The thing had gone to my personal account, and I did not suppose he had any business with it.

Q. Have you had any talk with any other of the stockholders with reference to reimbursing you?

A. No, sir.

Q. Do you know how Mr. Brady came to fix that check at $5,000?

A. I do not know.

Q. Had you ever told Mr. Brady that you had paid Mr. Guthrie $5,000?

A. I may have done so. Perhaps I did. I do not recollect about it. I think, very likely I did.

Q. Will you refresh your recollection, and is it not a fact that when you decided to begin this suit before the letter of December 16th, 1902, was written, did not Mr. Guthrie at that time tell you that you would be paid back the fee that you paid Mr. Guthrie?

A. No, sir, not to my recollection anything of the kind.

332 Q. You have no recollection to that effect?

A. No, sir.

Q. You stated yesterday that some time before December 16th, 1902, you had decided to begin this suit. Will you tell the Court more definitely what was said?

Mr. GUTHRIE: I object to the form of the question on the ground that it is unfair in view of the fact that the witness did not so testify yesterday, and hence calculated to mislead.

The EXAMINER: The objection will be noted.

(The question was read.)

A. I don't recollect. I could not tell you.

Q. You don't remember anything except what you testified to yesterday?

A. No, I did not keep it in my mind at all, whatever there was about it.

Q. Did you pay anything to the surety company that signed the injunction bond in this case?

A. My impression is that that was paid by Mr. Guthrie, I think. I presume he has charged my account.

Q. You have not paid it?

A. I think not.

Q. So that, have you paid out any money at all in this case except the $5,000 that you paid by check to Mr. Guthrie?

A. I think not.

Q. And that you got back from Mr. Brady?

A. Well, I don't think I got it back from him.

Q. Well, you got $5,000 from him?

A. Yes, sir.

Q. So you are not out any money on this Mills suit against the City of Chicago and the People's Gas Light & Coke Company up to the present time?

A. Well, I have not added that up. The course of that account is that I paid to Mr. Guthrie $5,000 as a—whatever—I don't know what you would call it, but as an attorney's fee, and charged it to my personal account, the same as any other legal fees would
333 go—personal account. And as I have testified before, when this check came in from Mr. Brady I presume I had not any other business that I thought of, and that went to my personal account, my credit, so that would stand——

Q. The one would balance the other?

A. The one would balance the other. Yes, the one would balance the other.

Q. And at the present time you are not out anything on that suit; is that right?

A. I am not out anything if I consider the Brady check in.

Q. Yes. Well, Mr. Brady didn't owe you any money for anything else, did he?

A. He did not owe me any money.

Q. No. Did you and Mr. Brady have any other business transactions?

A. No; I only took this as a contribution in my own mind in this suit. Whatever Mr. Brady may make out that he did it for, that is his affair.

Q. Of course you don't know what Mr. Brady had in mind?
A. I don't know what Mr. Brady had in mind.
Q. But it was certainly a generous contribution on his part?
A. Yes.
Q. Did you ever have any talk with Mr. Brady as to where he got the money from?
A. No. Oh—it has come up since this case; I have had some talk with him a few days ago.
Q. Well, what did he say?
A. He said it was a personal matter. I asked him about it.
Q. You asked him where he got the $5,000 from that he paid to you?
A. No, I did not ask him where he got it from. I suppose he got it from some honest source.
Q. It was not tainted money, you mean?
A. It was not tainted money, I don't think.
Q. But when did you meet him before this hearing?
A. I saw him, it must be since I had notice of this meeting.
334 Q. Since you had notice of this meeting to be had?
A. Yes.
Q. Was it last week or this week?
A. I should think that was last week.
Q. Where did you meet him?
A. At my office.
Q. He came and saw you?
A. Yes.
Q. And what did he say; was he alone?
A. Yes.
Q. What did he say?
A. Well, I don't know that he said directly that he sent his contribution to this suit, but he said that it was his own money and he did not give it—it was his own money that he sent in.
Q. It was his own money?
A. Yes.
Q. He did not get it from where?
A. It did not come from the company.
Q. Oh, he said it did not come from the company?
A. No. That was about all the——
Q. Was that all that was said?
A. That is practically all that was said.
Q. Do you remember anything else?
A. No, I don't remember anything else—anything that was pertinent.
Q. Well, whether pertinent or not, what else was said?
A. Well, the result of that would be I don't remember what was said.
Q. Was Mr. Guthrie there?
A. No, sir.
Q. Was anybody from Mr. Guthrie's office there?
A. No, sir.
Q. Have you seen Mr. Brady since that time?
A. No, sir.

Q. Have you talked with Mr. Meagher about this?
A. No, sir.
Q. Did you tell Mr. Guthrie what Mr. Brady said to you?
A. I presume I did.
Q. The talk that you have now testified about with Mr. Brady occurring after you had notice of this hearing, is the only talk you had with Mr. Brady in reference to this suit of yours against the
335 city of Chicago and the People's Gas Light & Coke Company, is it?
A. It is the only talk I have had with them of any importance that I remember.
Q. The only talk that you remember of?
A. Yes.
Mr. GUTHRIE: Of any importance, he said.
The WITNESS: Of any importance.
Q. Well, now, did you ever have any talk with him not of importance?
A. I don't remember. I don't remember of having any particular talk with him about it.
Q. Do you remember of having any talk with Mr. Brady in reference to this present suit at any time other than the talk that you have testified of having when he came to see you at your office after you got notice of this hearing?
A. I don't remember.
Q. You remember of no other talk?
A. I remember no other talk, although I may have——
Q. Oh, anything may have happened, but you have no recollection of any other talk?
A. No.

Re-direct examination by Mr. GUTHRIE:

Q. Mr. Mills, you are individually liable to Mr. Guthrie and his firm for the services and disbursements in this suit, are you not?

Mr. TONE: That is objected to as calling for a conclusion of law, and the witness has not qualified as an expert on legal matters, and matters of law are for the Court and not the subject of expert testimony.
The EXAMINER: The objection will be noted.

The WITNESS: I suppose I am.
Q. Will you please look at the paper I now show you, which was handed to counsel for defendant city at the time of your
336 cross-examination, and state whether or not that is a voucher which has been furnished you by your counsel in connection with the disbursements in this suit?
A. I suppose it is.
Q. Referring to that paper, can you refresh your recollection as to the name of the surety company which executed the bond you gave on the granting of the injunction in the interlocutory decree in this suit?
A. I do not think I took enough note of that. I know it was in

the surety company, and presumed it was a good company; but I never took special notice of what company it was.

Q. But will the reference to that memorandum or bill refresh your recollection upon that subject?

A. I have seen this bill before, but I don't know that I have any particular recollection of it. I remember seeing that bill before, but I don't think I saw it to take any particular note of it.

Mr. GUTHRIE: I will ask to have that marked for identification.

The EXAMINER: The paper in question will be marked for identification Complainant's Exhibit No. 10.

Q. Mr. Mills, since the session yesterday, has your recollection been refreshed as to the time that you first heard that Mr. Guthrie was connected with the suit which the People's Gas Light & Coke Company had itself brought and which at the time of the beginning of your suit was pending in the Supreme Court of the United States?

A. Yes, sir.

Q. What, to the best of your present recollection, is the date when you first heard of that fact?

A. My present recollection, being refreshed by a letter and not being certain yesterday when I testified, is that it was only a few months, two or three months.

Q. Two or three months with regard to what?

A. With regard to the commencement of the suit.

337 Q. Was it two or three months before or two or three months after the commencement of your suit?

A. I think two or three months before.

Q. You state that your recollection was refreshed. Was it by having your attention called to a letter which you wrote on July 23rd, 1903?

A. Yes, sir.

Q. And did you on that date write to your counsel, Mr. Guthrie, the letter which is now shown you?

A. Yes, sir.

Mr. GUTHRIE: I offer that in evidence.

Mr. TONE: That is objected to as hearsay, as merely the self-serving declarations of the complainant in his own favor, and as incompetent.

The EXAMINER: The objection will be noted and the letter in question marked Complainant's Exhibit No. 11.

Complainant's Exhibit 11 is in words and figures following, to wit:

JULY 23, 1903.

Mr. William D. Guthrie, 52 William street, N. Y.:

MY DEAR SIR: Will you please, at your convenience, inform me when in your opinion the case of Mills *vs.* The City of Chicago will come up, and also at what time we may expect a decision after the case has been heard?

I take it that the company is not anxious for an early time, but for my own satisfaction, I should be pleased to know the probable date.

Very truly yours,
(Signed) D. O. MILLS.

Q. Mr. Mills, referring to that letter marked Complainant's Exhibit 11, can you state when you first were informed and by whom that Mr. Guthrie was acting or was to act in the case brought
338 by the People's Gas Light & Coke Company?

A. The information came from you as to that.

Q. And was it before or after you wrote this letter to Mr. Guthrie of July 23rd, 1903?

A. I should think it would be before.

Q. Will you please look at the paper now shown you and state whether or not on or about July 24th, 1903, you received an answer from Mr. Guthrie to your letter to him marked Complainant's Exhibit No. 11?

Mr. TONE: That is objected to as incompetent and an attempt to introduce the self-serving declaration of the plaintiff and his counsel.

The EXAMINER: The objection will be noted.

The WITNESS: What is the question?

(Question read.)

A. Yes, sir.

Q. What became of the original letter from Mr. Guthrie?

A. I don't know?

Q. Have you made a search for it?

A. I have made a search for it.

Q. And you cannot find it?

A. I cannot find it.

Q. Where to the best of your recollection was it when you last saw it?

A. The only recollection I have about that is that that letter must have been received when I was in California, and very likely shared the fate of a great deal of correspondence out there that I did not retain, because I am unable to find it.

Q. To the best of your present recollection, is the paper now shown you a carbon copy of the letter which you received from Mr. Guthrie to which you testified?

Mr. TONE: That is objected to as leading and suggestive and incompetent.

339 The EXAMINER: The objection will be noted.

A. Yes.

Mr. GUTHRIE: I offer that in evidence.

Mr. TONE: I object to this offer. The letter of July 24th, 1903, is objected to as hearsay, incompetent, and an attempt to introduce the self-serving declarations of the complainant and his counsel.

The EXAMINER: The objection will be noted. The copy of the letter will be marked Complainant's Exhibit No. 12.

Complainant's Exhibit No. 12 is in words and figures following, to wit:

MILLS
vs.
CITY OF CHICAGO and PEOPLES GAS CO.

JULY 24, 1903.

DEAR MR. MILLS: I have your letter of July 23rd. This case will not be argued until early in October. We were ready to argue it when it was commenced, but the representatives of the City preferred delay, and it was considered unwise to attempt to force a hearing; indeed, it is doubtful whether we could have succeeded in doing so. If the case is argued in October, we should have a decision within a few weeks. If the decision be adverse, which we think probable in view of the prior decision, the case will be at once appealed to the Supreme Court of the United States and a motion made that it be heard together with the pending appeal in the suit brought by the company itself. This pending appeal the Clerk of the Supreme Court of the United States advises me will probably be reached for argument early in December.

It has been arranged that I am also to argue the pending appeal in Washington, and the separate suit brought by a stockholder
340 of the Northwestern Gas Light and Coke Company, involving the question of the power of the city council to pass any ordinance at all in regard to rates.

I am at work upon the arguments in these various cases, so as to be ready whenever we can secure a hearing, and I shall keep you advised from time to time as to the progress of the litigation.

Yours very truly,
(Sd.) WM. D. GUTHRIE.

D. O. Mills, Esq.,
15 Broad Street, New York City.

Q. Referring to your letter of July 23rd to your counsel, Mr. Guthrie, marked Complainant's Exhibit 11, you state among other things as follows: "I take it that the company is not anxious for an early time, but for my own satisfaction I should be pleased to know the probable date." How came you to assume that the company was not anxious for an early time in the hearing of the suit which you had brought?

Mr. TONE: That is objected to as incompetent. It is not proper for the witness at this time to describe his mental operation at the time this letter is alleged to have been signed and sent, and that it calls for a conclusion and not a fact.

Mr. GUTHRIE: I won't press the question in view of that objection.

Q. Mr. Mills, referring to the transcript of your testimony and the cross-examination by counsel for defendant city, you were asked, "How long was the first talk you had with Mr. Guthrie about your interest in the People's Gas Light & Coke Company before December 16th, 1902." And the answer as noted on the minutes is, "I
341 should say a year or two." Do you desire to make any correction or explanation in regard to that statement?

Mr. TONE: That is objected to on the ground that a witness has no right to change his evidence.

The EXAMINER: Note the objection.

A. I want to change that to a month or two. My recollection was not clear on the subject.

Q. At page 52 of the transcript you were asked the question as follows: "Was the suit brought to confer on the Court of the United States jurisdiction of a case which it would not otherwise have cognizance of?" And you answered: "I so understood it." Do you desire to make any correction or explanation of that answer?

Mr. TONE: That is objected to on the ground that the question is itself incompetent, calling for a conclusion of law and of fact, and that witness' judgment and conclusion would not be competent evidence, and that it is not a subject-matter of expert testimony.

The EXAMINER: The objection will be noted.

A. I don't think I properly understood the question.

Q. Had you any personal knowledge at that time of the legal questions involved as to jurisdiction of the State or Federal Courts?

Mr. TONE: That is objected to as immaterial, what the complainant knew or did not know. His mental operations at that time not being a proper subject matter of evidence.

The EXAMINER: The objection will be noted.

342 The WITNESS: What would be the question now?
(Question read.)

Mr. TONE: Same objection as above noted.

A. I had no knowledge of the law on the question. I knew that Mr. Guthrie was to bring the suit in the United States Courts. The question of law in reference to the business I had no knowledge of.

Q. You knew that, did you not, from what Mr. Guthrie advised you?

Mr. TONE: That is objected to also as suggestive and as calling for a conclusion rather than a fact and as incompetent because it is a communication between an attorney and his client, being alleged self-serving declarations in their own favor that are inadmissible in law.

The EXAMINER: The objection will be noted.

A. Yes, sir.

Q. On page 71 of the Stenographer's Transcript, the question put to you by counsel for the defendant city was as follows, referring to the institution of your suit: "And you did that at the request of Mr. Guthrie, is that right?" To which you answered: "And the protection of my own interests. I should not have gone into it without." Did you begin the present suit at the request of Mr. Guthrie?

Mr. TONE: That is objected to as having been already answered and as leading and suggestive in form and incompetent as redirect examination.

The EXAMINER: The objection will be noted.

343 A. I think not. I suppose I can answer it more definitely, that I did not.

Recross-examination by Mr. TONE:

Q. Since the hearing yesterday have you had any talk with anybody about this matter?

A. I had a few minutes talk with Mr. Guthrie.

Q. And you talked over some of your evidence yesterday, didn't you?

A. Yes. This evidence that I have just been testifying to. Simply to draw my attention to it, the correctness of it.

Q. Now, how long before the letter of December 16th, 1902, was it, that you first saw Mr. Guthrie and talked with him about the gas ordinance of the city of Chicago?

A. That I could not tell.

Q. Did not you say a moment ago that it was two or three months before that.

A. That was after my mind was refreshed by a letter that it must have been two or three months before instead of a year or two. If that is what you were on.

Q. It was two or three months before December 16th, 1903?

A. I say one or two, it may have been two or three. My recollection is not very distinct about that.

Q. But your best recollection is two or three months before December 16th, 1903, that you first met Mr. Guthrie in reference to the seventy-five cent gas ordinance?

A. Yes.

Q. Of 1902?

A. Yes.

Q. And where did you see him at the time?

A. I think in his own office. I went to see him.

Q. He was not then your lawyer?

A. No, sir, unless this case had been commenced.

Q. This is two or three months before December 16th, 1902. He was not your lawyer at that time?

A. No, sir.

Q. And you had never met him before, had you?

A. I don't know. I have some indefinite idea that I had.

344 Q. Well, not in any business way, you had not had any business dealings with him before?

A. No.

Q. What was the first thing you said to him about the seventy-five cent gas ordinance?

A. I don't remember.

Q. What did he say?

A. I don't remember that.

Q. How long did the interview last?

A. Oh, it would not be very long, a very short one. I think he was a very busy man, and I was busy.

Q. Well, how long about?

A. Oh, possibly ten minutes or five minutes, five or ten minutes, something of that kind.

Q. You have no recollection of what was said?

A. Anything more than I had come to make inquiries about doing something in connection with People's Gas matters.

Q. What did he say?

A. That I don't remember what he said.

Q. You did not hire him as a lawyer at that time?

A. I did not hire him as a lawyer until this case was commenced. Well, I presume a short time before.

Q. When did you next see him?

A. Well I don't remember.

Q. What was said before this suit was started between you and Mr. Guthrie as to what court it should be commenced in?

A. That was left entirely to him. I don't remember what was said.

Q. Well, when you testified a moment ago that he said he was going to begin it in the Uni ed States Court, what did you have reference to?

A. That was the information I got from him.

Q. Did he explain why he was going to commence it in the United States Courts?

A. I presume he did, but I don't remember.

345 Q. Didn't he say as a matter of fact——

A. The case was entirely in his hands.

Q. Didn't he say as a matter of fact that he was afraid the Supreme Court of Illinois might beat him, and for that reason he had more hopes of getting into the United States Courts?

A. I don't remember his stating anything of the kind. I don't remember what he did state.

Q. Who is the New York attorney for the People's Gas Light & Coke Company?

A. I don't know who would be considered their attorney

Q. Have they any representative here?

A. I don't know. I have no business connection with that part of the company. I am not a director, or have any——

Thereupon the further taking of evidence in this cause was continued until 3 o'clock p. m. At which hour all parties met, and the hearing was again adjourned by order of the Master, to Monday, November 27th, at 11 o'clock a. m., at the office of complainant's solicitor, 52 William street, New York City. The hearing of complainant's witnesses in Chicago to proceed on Thursday, November 23rd, 1905, at 2 o'clock p. m., at the office of the Examiner, No. 505 Monadnock Block, Chicago.

After having read over and corrected the foregoing testimony the same is subscribed by me this 11th day of January, 1906, in the presence of Francis J. Kearful.

DARIUS O. MILLS.

346 JANUARY 2ND, 1905—11 o'clock a. m.

Met pursuant to notice.

Present: Counsel as before and Mr. H. M. Ashton, for the defendant City of Chicago.

GEORGE O. KNAPP, a witness produced in behalf of the complainant, having been first duly sworn, testified as follows:

Direct-examination by Mr. GUTHRIE:

Q. State your name, age, residence and occupation?

A. George O. Knapp; aged 50; residence, Chicago; occupation, president of the People's Gas Light & Coke Company.

Q. How long have you been connected with the People's Gas Light & Coke Company?

A. Something over eighteen years.

Q. In what capacities?

A. As engineer, vice-president and president.

Q. How long have you been president of the company?

A. Since February, 1901.

Q. Are you a director of the company?

A. I am.

Q. How long have you been a director of the company?

A. Since 1897.

Q. How many directors are there?

A. Five.

Q. Who were the directors of the company in 1902 and 1903?

A. The same as at present, Mr. A. R. Flower, Mr. A. N. Brady, Mr. C. K. G. Billings, Mr. Walton Ferguson and myself.

Q. In your various capacities as stated by you, have you acquired personal knowledge of the various properties of the company and of its affairs?

A. I have.

Q. Are you familiar with the history of the company from its incorporation and its development from time to time?

A. I am, to a large extent.

347 Q. What is the authorized capital stock of the company?

A. Thirty-five million.

Q. What is the amount of capital stock now outstanding?

A. $32,969,000, I think it is.

Q. Par value?

A. One hundred.

Q. That is $32,969,000 par value stock?

A. Par value, yes, sir.

Q. What amount of outstanding mortgage bonds has the company, its direct bonds or upon which it is liable?

A. $35,096,000, I think. A trifle over $35,000,000.

Q. How many manufacturing plants has the company in the City of Chicago?

A. We have eight.

Q. Would you please state where they are located?

A. There are two on Division street, on the north side; one on the

north side, and one on the west; both on Division street. One at Twenty-second street and Centre avenue; one at Twenty-fourth street, and one at Hough Place; one in South Chicago, about Ninety-second street, and one at Seventy-third street and South Chicago avenue; and one at Cologne and Deering street.

Q. What are these plants used for?

A. The manufacture of gas and the storage of materials and setting meters, shops.

Q. In addition to these manufacturing plants, has the company a number of shops or buildings in the City of Chicago, and, if so, to what extent?

A. We have three or four separate shops for the storage of gas stoves and settings, storage of pipes, street main department, service department, etc.

Q. Are you acquainted with the number of miles of pipes and mains which the company has laid or owns in the streets of the City of Chicago?

A. At the present time there are approximately 2,000 miles.

Q. In January, 1905, about how many miles of pipes and
348 mains had been laid or were owned by the company?

A. Approximately, 1,900.

Q. And it is increasing at the rate of about how much per annum?

A. 70 to 100 miles a year.

Q. And these pipes—these 2,000 miles of pipe are laid in the streets, avenues, highways and public squares of the city, are they not?

A. They are.

Q. And are owned and operated by the People's Company?

A. Yes, sir.

Q. Can you state, Mr. Knapp, approximately, how much has been spent or invested in these gas works or plants and mains and pipes that you have referred to?

A. Well, since I have been connected with the company, there has been considerably over $10,000,000 expended in that way.

Q. And how much would you say had been expended in the purchase of personal property which is now owned by the company?

A. I don't know what you mean by personal exactly.

Q. As distinguished from real estate?

A. What I have spoken of is largely, I should say, personal property, factory and street mains. That is, not real estate.

Q. But in tools and appliances which are separated from real estate, from the buildings, what would you state, as nearly as you can approximate it, the value of that class of property?

A. I have not any figures on that at the moment, Mr. Guthrie, in my mind of the personal, separate from the plants, that is, tools and wagons, etc.

Q. To your personal knowledge, Mr. Knapp, for how many years has the People's Company been continuously engaged in manufacturing, selling and distributing gas in the City of Chicago?

A. From between thirty and forty years.

Q. And it is still so engaged, is it not?

A. It is.

Q. At the present time, how many customers has the Peo-
349 ple's Company in the City of Chicago?

A. Upwards of 350,000.

Q. How many separate meters has the company in connection with the operation of its business and distribution of gas?

A. Upwards of 350,000.

Q. How much gas is manufactured and distributed by the People's Company in the course of a year?

A. Approximately, 11,000,000,000 cubic feet per year.

Q. What is the average amount of consumption per month of your customers in the City of Chicago?

A. It is approximately about two dollars and a quarter to two dollars and a half.

Q. And what is the average consumption of customers in the City of Chicago during the course of the year?

A. Twelve times that amount; about $26 to $28.

Q. What knowledge have you in regard to the prices which have been charged from time to time by the People's Company for gas per thousand cubic feet?

A. Before I was connected with the company I knew that they charged as high as $3.50 per thousand.

Q. And has that amount been reduced from time to time?

A. It has.

Q. What was the price charged by the company on January 1st, 1896?

A. $1.05 per thousand.

Q. And what has been the price which the company has charged since January 1st, 1896?

A. $1.05 during the year 1896 and $1.00 per thousand cubic feet since January 1st, 1897.

Q. One dollar per thousand cubic feet?

A. One dollar per thousand cubic feet.

Q. Has the City of Chicago itself been a customer of the People's Company?

A. It has.

Q. And for how many years to your knowledge?

A. Long before my connection with the company and ever since.

Q. And has the amount of its consumption increased from
350 time to time?

A. It increased up to a certain point. It has diminished somewhat in the last few years.

Q. In 1899, what was the amount in dollars worth of gas consumed by the city?

A. Approximately, $550,000.

Q. And what was the amount consumed by the city in 1900?

A. It was somewhat less. I should say about $60,000 less.

Q. What was the reason, if any, known to you for this diminution in the consumption on the part of the city?

A. Well, less number of street lamps I think accounted for it.

Q. Have you knowledge of the amount now due by the City of Chicago to the People's Company for gas consumed by the city?

A. Yes, sir.

Q. Please state the amount?

A. It is approximately $1,300,000.

Q. Has the city paid anything for the gas consumed by it since the passage of the ordinance of October 15th, 1900?

A. I think they paid for the first half of the year 1901.

Q. And since then?

A. Nothing since then.

Q. What knowledge have you, if any, with regard to the financial responsibility of customers for gas in the City of Chicago of whom you have stated the company has 350,000?

A. Well, there are a very large number that don't pay their bills when they become due and have to be cut off from the supply of gas.

Q. What has been the custom of the company in regard to the period of credit given to consumers?

A. From ten to twenty days after the bill is rendered.

Q. And for what period is the bill usually rendered?

A. One month.

Q. And if from ten to twenty days after that date the bill is not paid, what has been the custom of the company?

A. After notifying them three times in writing, written or
351 printed notice, they are then cut off.

Q. What is the daily average which you find it necessary to cut off by reason of failure or inability to pay bills?

A. That is a very large number. We have something like an average of 1,400 a day that are either cut off or turned on. We call them, "Turn ons" and "Cut offs."

Q. And to what extent have you to remove meters from day to day? Do you remember?

A. I think we remove—this last year we have removed an average of something over 160 a day, working days I mean.

Q. What experience have you had in regard to the difficulty of collecting bills from small consumers?

A. Well, I think the fact of so many cut-offs rather testifies to that point better than anything else. A great many people leaving town, of small financial responsibility, or none at all.

Q. What has been your practical experience in regard to the collection of due bills after parties have been cut off from the use of the gas?

A. Well, it is extremely difficult to collect gas bills. That is the reason we are obliged to resort to the cutting off of the gas to enforce collections.

Q. To what extent has the company in the past found itself unable to collect past due bills?

A. I could not tell you the exact figures, Mr. Guthrie. It is a considerable amount.

Q. From your practical experience, Mr. Knapp, what would be the effect if the company had to delay collecting its bills from its customers for several months or years during the pendency of litigation?

A. It would be a tremendous loss to us.

Q. Could you approximate to what extent the loss would be that would be involved?

A. Why, I should say it would run into a million dollars or over easily, very quickly.

Q. Could you approximate to what extent of loss in your
352 judgment would be involved if the collection of the bills was delayed pending litigation?

A. It depends altogether on the time, Mr. Guthrie.

Q. Well, several months. What would be the loss? Take it at six months as the minimum?

A. I don't think I have any figures in mind that would express that accurately.

Q. And if the delay were several years, pending litigation, could you give any idea as to the extent of the loss that would be involved?

A. I have not made any definite figures on that point, a very large amount.

Q. Do you recall the passage of the ordinance of October 15th, 1900, by the City Council of Chicago?

A. The Seventy-five Cent Ordinance?

Q. Yes.

A. Yes, I remember that.

Q. And do you recall the fact that litigation was instituted by the company to test the validity of such ordinance?

A. Yes.

Q. Where was the litigation instituted, and about what date?

A. It was instituted in Chicago; I have forgotten the exact date, Mr. Guthrie. Sometime after that.

Q. Do you recall the date that the case was decided by Judge Grosscup?

A. I don't recollect that.

Q. Who were the counsel of the People's Company engaged on its behalf in that litigation?

A. Our attorney, Mr. Meagher; he had associated with him Judge Moran.

Q. At any period of that litigation, were other counsel associated with Mr. Meagher while the case was pending before Judges Grosscup?

A. Yes, Judge Griggs or ex-Attorney-General Griggs of New Jersey was associated for the time with Mr. Meagher.

Q. Was any other lawyer in New York associated in that case?

A. Mr. Sheehan was also associated in the litigation.

353 Q. Do you recall the receipt by the company in December, 1902, of a letter from Darius O. Mills, the complainant in this suit?

A. Yes, sir.

Q. When did you first see that letter? (Referring to Complainant's Exhibit No. 6).

A. Immediately upon its receipt by the company.

Q. Where was the letter received?

A. At our office here in New York.

Q. What did you do with the letter?

A. I sent it to our counsel, Mr. Meagher.

Q. Do you recall about the date when you received the letter?

A. Except that it was some time in December—the middle or latter part of December.

Q. When was the first meeting of the Board of Directors held after the receipt of that letter?

A. It was held the last of January, the following January.

Q. Do you recall the date?

A. I think it was the 29th of January.

Q. 1903?

A. 1903. It was the 29th, because I had just returned from Europe the day before.

Q. Was there any reason, and if so, please state the reason, why there was a delay of nearly six weeks in the meeting of the Board of Directors at that period of the year?

A. Three of the directors went abroad from the 27th of December, 1902.

Q. Who were those directors?

A. Mr. Brady and Mr. Billings and myself.

Q. And how long did you remain absent?

A. About a month.

Q. Where did you go?

A. We went to Paris on a business matter.

Q. And while you were absent, was it feasible to hold a meeting of the Board of Directors?

A. There would be no quorum. No, sir.

Q. So that there were only two directors of the company remaining in the country in January, namely, Mr. Flower and
354 Mr. Ferguson?

A. That is all.

Mr. MEAGHER: Did you say what day you returned?

The WITNESS: We returned the day before this meeting, the 28th.

Q. You have stated that you were absent on business. Had arrangements for this absence been made by you and Mr. Billings and Mr. Brady prior to the receipt of this letter from Mr. Mills?

A. Yes, we had agreed to go some months before that.

Q. And have you stated where you went?

A. We went to Paris.

Q. On your return from Paris, did you on or about the 29th of January, 1903, attend a meeting of the Board of Directors of the People's Company?

A. Yes, sir.

Q. Where was that meeting held?

A. At the office of the company, 54 Wall street.

Q. In the City of New York?

A. In the City of New York.

Q. Who was present at that meeting?

A. The full board.

Q. Was anyone else present?

A. Our counsel, Mr. Meagher, was there.

Q. Was the letter which has been shown you, from Mr. Mills, dated December 16, 1902, Complainant's Exhibit 6, submitted to the board at that meeting?

A. It was.

Q. Will you please state as full as you can now recollect what occurred at that meeting?

A. Mr. Meagher reported the decision in regard to that letter to the board, and advised the board that it would be unwise for them to accept the suggestions or requests made by the letter, as we already had a suit pending which, in his opinion, covered the same points, and which he felt perfectly confident of winning.

355 Q. Did Mr. Meagher state to what suit he referred?

A. He referred to the suit before Judge Grosscup.

Q. And did the board know at that time that an appeal was pending from Judge Grosscup's decision in the Supreme Court of the United States?

A. Certainly.

Q. Did Mr. Meagher say anything at that time in regard to the effect of additional litigation on behalf of the company, and if so, please state as fully as you can recollect, what Mr. Meagher said?

A. In effect, Mr. Meagher said that he thought it would be very unwise to bring another suit when there was one pending on the same question. He thought it would have a very bad effect on public opinion in Chicago; that it would be used for political purposes; that the company would be charged with trying to perpetuate unnecessary law suits, and he felt that it might possibly be called to the attention and have some effect upon the Court to which he was going with his case. He thought it very unwise to have another suit brought.

Q. The court to which he referred was the Supreme Court of the United States?

A. Yes.

Q. Where the pending appeal from Judge Grosscup's decision was then?

A. Yes, sir.

Q. Did Mr. Meagher state anything in regard to the views or conclusions of other counsel with whom he had consulted?

A. He said that his associate counsel joined with him in that opinion, Judge Moran and Judge Sears, who was associated with him.

Q. At that time, in January, 1903, was Mr. William D. Guthrie, of the City of New York, counsel of the People's Gas Company in any way or form?

A. No, sir.

Q. Had he been consulted to your knowledge, by the People's Gas Company in connection with this ordinance in any way or form?

A. No, sir.

356 Q. Was Mr. Guthrie, of New York, attorney for the People's Gas Company in December, 1902, or January, 1903?

A. No, sir.

Q. Did the company have any attorney in New York during those years, 1902 down to the present time?

A. No regular attorney. Mr. Sheehan had been in consultation previously.

Q. What action did the Board take upon the advice of Mr. Meagher at this meeting?

Mr. TONE: That is objected to on the ground that the record is the best evidence.

The EXAMINER: Let the objection be noted.

The WITNESS: Will you repeat that question, please?

The EXAMINER: Read it.

(Question read by the Reporter.)

Mr. TONE: I object to that.

A. They declined to bring any suit in addition to the one that they had at that time.

Q. It appears, Mr. Knapp, that Mr. William D. Guthrie appeared as one of the counsel of the People's Gas Light & Coke Company in the argument of the appeal of the People's Company from Judge Grosscup's decision, which case was argued in the Supreme Court in January, 1904. Will you please state if you have personal knowledge on the subject as to when and how Mr. Guthrie was retained to argue the case of the company in the Supreme Court of the United States?

A. It was in the latter part of June or first of July that Mr. Meagher suggested that Mr. Guthrie be retained, if possible.

Mr. TONE: That is objected to as hearsay and incompetent, and as merely the self-serving declaration of the parties and their counsel.

357 The EXAMINER: Let the objection be noted.

Mr. MEAGHER: Mr. Examiner, I want to ask right here that the stenographer be instructed to take down everything that is said by everybody on this hearing whether he regards it as pertinent or not. I would like to have a complete record.

The EXAMINER: That may be done. The Examiner rules upon the objections as offered that they shall be noted simply to comply with the rule of court which requires that the objections shall be noted.

Q. You have stated that that was the latter part of June or first part of July of what year?

A. 1903.

Q. Was that before or after the commencement of the Mills' suit?

A. I don't know when the Mills suit was begun. I don't recollect now.

Q. Did you then, as president of the company, give Mr. Meagher any authority in regard to retaining Mr. Guthrie?

A. Yes, I told Mr. Meagher that if he thought it advisable to go ahead and secure the services of Mr. Guthrie.

Q. Prior to that time, Mr. Knapp, had Mr. Guthrie, so far as you know, and to the best of your knowledge, so far as the officers of the company knew, had Mr. Guthrie been retained by the People's Company in connection with this litigation or the ordinance of October 15th, 1900, in any way or form?

A. No, sir.

Cross-examination by Mr. TONE:

Q. Can you fix definitely the date when Mr. Guthrie was retained to represent the People's Company?

A. Well, I was first notified of it some time in September, 1903, by Mr. Meagher, upon his return from Europe. He went abroad.

358 Q. That was the first knowledge you had of it?

A. Yes, sir.

Q. When did Mr. Meagher first talk to you about retaining Mr. Guthrie?

A. The latter part of June or the first of July, 1903.

Q. And when was Mr. Guthrie's first fee paid by the People's Company?

A. Some time in 1904, after his argument in the Supreme Court.

Q. Did you personally have any talk with Mr. Guthrie before he was retained?

A. I never met him before he was retained.

Q. You never discussed the case with anybody but Mr. Meagher, is that right?

A. That is correct.

Q. And it was Mr. Meagher's suggestion that it would be a good idea to retain Mr. Guthrie, is that right?

A. Yes, sir.

Q. What did you say?

A. I told him that I thought the directors would approve of his using his own judgment in the matter and that I did.

Mr. TONE: Will you give me the letter to the Board of Directors?

(The letter requested was handed to counsel by the Examiner.)

Q. The document to which you referred awhile ago as being a letter from Mr. Mills, I hand you now a paper and ask you if that is not a copy of the letter or what purports to be a copy of the letter?

A. I am not prepared to say.

Q. You don't know whether that is a copy or not?

A. No.

Q. But that is the document you identified awhile ago as the letter from Mr. Mills, is it not?

A. Possibly. I did not mean to. The contents of it I had reference to.

Q. But that is the paper which was exhibited to you on direct-examination by Mr. Guthrie to which you replied that that was the letter?

A. I believe that is the letter.

359 Q. That is the same paper you had in your hand, the only paper you have had in your hand on this examination? I want to identify the document.

A. Yes.

The EXAMINER: The paper referred to by counsel is Complainant's Exhibit 6.

Mr. TONE: Yes, thank you.

Q. Where is the letter itself, if there ever was such a document?
A. I sent the letter to Mr. Meagher.
Q. And you have not seen it since?
A. I don't recollect seeing it except at the Board meeting with the other papers.
Q. You cannot tell whether Complainant's Exhibit 6 here is a copy of that letter or not, can you?
A. Whether this is a copy?
Q. Whether this is a copy of the original, whether this is an exact copy of the original?
A. I believe it to be.
Q. But you cannot tell definitely?
A. I can tell by comparing if it is a copy.
Q. When did you get the letter of December 16th, 1902, from Mr. Mills?
A. Some time between that date and Christmas, the 25th of December.
Q. Well, can you tell more nearly than that when you received it?
A. I don't recollect the exact day.
Q. How long after you received it did you give it to Mr. Meagher?
A. I sent it to him at once.
Q. Did you write him any letter accompanying it?
A. I don't think I did.
Q. Enclosed it in a plain envelope?
A. I don't recollect.
Q. Well, what is your best recollection?
A. I don't recollect that I put it in any envelope. I presume the office man enclosed it.

Mr. GUTHRIE: Have you the original, Mr. Meagher?

360 Mr. MEAGHER: No, I have not been able to find it.

Q. Where were you when you received the letter from Mr. Mills bearing date December 16th, 1902?
A. It was handed to me in my office.
Q. Where?
A. 54 Wall street.
Q. New York?
A. Yes.
Q. How long had you been in New York on December 16th, 1902?
A. I don't recollect that?
Q. Your home is in Chicago, is it not?
A. Yes.
Q. When did you leave Chicago prior to December 16th, 1902?
A. Prior to that date I don't recollect.
Q. When did you go to Europe in December, 1902?
A. I sailed from New York on the 27th.
Q. When did you leave Chicago?
A. On the 25th, the afternoon.
Q. Had you been in New York before that, before the 25th of December, 1902, during the month of December, 1902?
A. Yes.
Q. When?
Q. I went to Chicago a few days before Christmas, to spend Christ-

mas and then left there on the 25th, took the steamer on the 27th, from New York.

Q. Have you any recollection now whether you personally mailed this letter to Mr. Meagher bearing date December 16th, 1902, and signed by Mills, as you say?

A. I did not put it in the postal box, if that is what you mean.

Q. But did you enclose it in an envelope yourself?

A. I would not say whether I did or my assistants.

Q. Well, have you any recollection as to how it was sent to Mr. Meagher, by whom?

A. No distinct recollection, no.

Q. Where did you get it from?

A. Except in the customary way.

Q. You infer that that was the customary way of doing
361 business?

A. Of handing it to my assistant and telling him to send it to Mr. Meagher. I may have done it or I may have put it in an envelope myself and mailed it. I have no distinct recollection.

Q. You have no distinct recollection on that. You infer that from the custom in other matters?

A. Yes.

Q. Now, do you open the mail of the company?

A. Yes. Not all the mail of the company I don't mean, but all that is addressed to my office.

Q. To whom was this communication with Mr. Mills bearing date December 16th, 1902, addressed:

Mr. MEAGHER: It shows on the face of it, if your Honor please.

Q. The envelope?

A. I don't recollect the envelope, whether it was addressed to me or to the directors or whom.

Mr. TONE: On the face of it, it doesn't show how the envelope was directed.

The WITNESS: No.

Q. Where is the envelope?

A. I don't know.

Q. Did you ever see it?

A. That this came in?

Q. Yes, Mr. Mills' letter?

A. I don't know where the envelope is. I don't recollect anything about the envelope.

Q. Have you no recollection at all as to who first showed you that letter or whether you yourself opened the mail or whether it was handed by somebody else?

A. I simply recollect that it came to me in the usual course on my desk with the rest of my mail. I recollect it.

Q. Did you have any talk with Mr. Meagher about it when you got back to Chicago?

A. I don't remember of having *having* any specific talk with him about it.

Q. Do you remember having any talk with him at all be-
362 fore you left for Europe?

A. I don't know.

Q. Do you know Mr. Mills?

A. I met him once about five or six years ago. I have never met him since.

Q. Did you ever have any talk with him about it?

A. No, sir; I never met him.

Q. Any time?

A. No, sir.

Q. Who answers all the communications addressed to the Board of Directors of the People's Gas Light & Coke Company?

A. I usually attend to them.

Q. Does the secretary also attend to the correspondence?

A. No.

Q. Make any answer to Mr. Mills' communication?

A. No, I did not.

Q. Did you direct anybody else to?

A. No. All legal matters or letters of that kind we send direct to our counsel's office to make such answer as he sees fit.

Q. The next thing that you heard of it was at the directors' meeting, January 29th, 1903. Is that right?

A. That is right. It is possible Mr. Meagher may have spoken to me about it the day before on my arrival. I don't recollect that distinctly.

Q. Did you see that letter at that directors' meeting?

A. Yes.

Q. Was it a copy or was it the original you saw there?

A. I should say it was the original.

Q. Was that original written in long hand or in typewriting?

A. I think it was a typewritten letter.

Q. Was it written on plain paper, or did it bear Mr. Mills' letter head?

A. I don't recollect that.

Q. How many pages was it composed of?

A. I don't remember that.

Q. How far from Mr. Mills' office is the office of the com-
363 pany in New York City?

A. It is not very far, perhaps 1,000 feet.

Q. Did you request any of the directors or officers or attorneys of the company to communicate with Mr. Mills in any way prior to the directors' meeting of January 29th, 1903?

A. No, I did nothing but send it to our counsel.

Q. When this matter came up at the directors' meeting on January 29th, 1903, was the time when Mr. Meagher said it was unwise to begin any further suit while the suit was pending in the Supreme Court of the United States. Is that right?

A. Yes.

Q. Did Mr. Meagher say anything about when that case would probably be disposed of?

A. I think he mentioned that he hoped to have it completed that year.

Q. Did he say whether he expected to win or lose the case?

A. He expected to win the case.

Q. But in the event that he was beaten in that case, what did he say as to his intentions?

A. I don't recollect that he made any statement as to that.

Q. Was that discussed at any time?

A. I have no recollection of any discussion. He felt very confident of winning the case.

Q. Yes, but at the same time did not he say it was possible that he might lose the case?

A. I don't recollect his making any statement of that kind.

Q. Well, did you ever discuss with any of the counsel for the company what you were going to do in the event you lost the case in the Supreme Court of the United States—that People's case?

A. I don't recollect any such discussion. It was left entirely in the hands of our counsel and his associates. He was authorized to call in whatever other counsel he desired to discuss the case.

Q. Did you ever discuss the advisability of reducing the
364 price of gas to 75 cents to comply with the ordinance?

A. I don't recollect ever discussing that.

Q. Did the Board of Directors ever pass any resolution to that effect at any time that they were going to comply with the ordinance?

A. No, none.

Q. Did you ever pay any money to Mr. Mills?

A. No, sir.

Q. Did you ever discuss with anybody the payment of any money to Mr. Mills?

A. No, sir.

Q. Did you know that Mr. Brady sent a check for $5,000 to Mr. Mills in May, 1903?

A. I know it from this testimony that it was given here. That was the first time.

Q. The first time that you had ever heard of it?

A. Yes.

Q. You were very much surprised to learn that, weren't you?

A. I was.

Q. Have you seen Mr. Brady since?

A. Yes.

Q. Have you talked with him about it?

A. Since what date?

Q. Since the testimony was taken here at which Mr. Mills testified about Brady giving him $5,000?

A. I don't recollect talking with him about it. I talked with Mr. Meagher about it. He told me of it.

Q. How many times have you ever seen Mr. Brady since Mr. Meagher testified here on November 18th, 1905?

A. I have seen him very frequently.

Q. Have you talked over this suit with Mr. Brady?

A. No.

Q. It never has been mentioned?

A. I would not say it has not been mentioned, but I have not talked it over with him at all.

Q. You never asked him anything about that $5,000?
A. No, sir.
Q. And he never volunteered any information?
A. Not to me.
365 Q. Were you ever asked by anybody to contribute to help that suit along?
A. No, sir.
Q. Mr. Brady is the vice-president of the company, is he not?
A. Yes, sir.
Q. And he acts as president in your absence, doesn't he?
A. If he has occasion to he would. I don't recollect his having taken any official action?
Q. Well, you live in Chicago, do you not?
A. Yes.
Q. And there is business contracted by the company in New York at times, is there not?
A. Yes; I usually come on to transact it.
Q. Has the Board of Directors of the company any executive committee?
A. No active executive committee.
Q. But you have a sort of a committee, haven't you, that——
A. We have no active committee at all.
Q. What do you mean by saying no active?
A. Because it may be possible that there is some committee authorized on our books, but there has been no committee that has ever acted. Our Board is so small that we always get together on questions requiring official action.
Q. Mr. Brady consults you frequently, doesn't he, and you consult him about the action of the company?
A. Very rarely. It is mostly with Mr. Billings I consult.
Q. How long has Mr. Brady been a director of the company?
A. Since about 1897.
Q. How long has he been vice-president of the company?
A. Since about that date.
Q. Did you ever discuss with Mr. Brady the Mills suit at any time?
A. No, sir.
Q. You have never, at any time, as I understand you, talked with Mr. Brady about the Mills suit, is that right?
A. That is right. I have no recollection of ever——
366 Q. Discussing it with him?
A. Discussing it with him.
Q. Have you ever discussed it with Mr. Billings?
A. In a general way.
Q. But you have not discussed it even in a general way with Mr. Brady?
A. I have no recollection of discussing it with Mr. Brady.
Q. Mr. Brady and you went to Europe in 1902, in December. Is that right?
A. That is right.

Q. Did you tell him at that time that Mr. Mills threatened to begin a suit unless the stockholders commenced another one?

A. I don't recollect it.

Q. Well, when this letter was sprung at this Directors' meeting in January, 1903, Brady was surprised, wasn't he?

A. I don't recollect whether he was surprised or not.

Q. Did he say anything?

A. I don't remember his saying anything except the regular discussion in the Board meeting at the time.

Q. Who did most of the talking there at this Board meeting?

A. Mr. Meagher.

Q. Did you express your views on the subject?

A. I think I did.

Q. Did Mr. Brady express his views?

A. I don't recollect whether he did or not.

Q. When you say that eleven billion cubic feet of gas are manufactured and sold by the People's Company in a year in Chicago, do you refer to the gas manufactured by the companies that were consolidated into the People's Company by the subsequent passage of the Act of 1897?

A. I mean all the gas sold by the People's Company.

Q. Does that include also the gas manufactured by the Universal Gas Company?

Mr. MEAGHER: That is objected to, if your Honor please, as irrelevant, immaterial and incompetent, and I will advise the witness under the advice of counsel to refuse to answer, on the
367 ground that the two counsel sitting in this room have lately instituted a suit in Chicago for the purpose of harassing this company. It is a suit that they themselves have engineered and are conducting and they are seeking to get this information for use in that case, and I therefore will instruct the witness not to answer the question.

The EXAMINER: The objection and instruction of counsel will be noted.

Mr. ASHTON: Nothing with reference to that in the mandamus suit.

Mr. MEAGHER: I know what the mandamus suit is, Mr. Ashton, and I know the purpose of that question. I know what you two men are trying to do, and I beg to tell you you will hear more about it before you get through.

Mr. TONE: That is all right. You can do all the talking you want to.

Q. Are you going to answer the question, Mr. Knapp?

A. I decline to.

Q. And your reason for declining is that you are advised by your counsel?

A. I am instructed by my counsel.

Q. You have no other reason?

A. No, I have no other reason.

Q. Are you a stockholder in the Universal Gas Company?

Mr. MEAGHER: The same objection.

Q. Is Mr. Brady a stockholder in the Universal Gas Company?

Mr. MEAGHER: The same objection, if your Honor please, and I instruct the witness not to answer.

368 The EXAMINER: The objection and the instruction will be noted.

Q. When did you come from Chicago to attend this hearing.

Mr. MEAGHER: That is objected to as containing an assumption that he did come from Chicago to attend this hearing.

The EXAMINER: Note the objection.

Q. Answer the question.

A. Some two weeks ago; two or three weeks; I have forgotten the exact date, sir.

Q. Who asked you to come to this hearing here?

A. Mr. Meagher and Mr. Guthrie.

Q. Who spoke to you first about it?

A. About the hearing?

Q. Yes, about attending this hearing?

A. I think Mr. Meagher.

The EXAMINER: A little louder.

The WITNESS: Excuse me.

Q. When did Mr. Meagher ask you to come to this hearing?

A. I don't know. He said I might be wanted the last time he was in New York.

Q. How long ago was that?

A. I should say a couple of weeks ago, three weeks ago, something of that sort.

Q. And Mr. Meagher told you?

A. I think he told me I might be wanted.

Q. And when did he next speak to you?

A. I think he told me yesterday morning that he wished me to come to the hearing to-day.

Q. Where did you see him that time?

A. At the Hoffman House.

Q. Were you served with any subpœna to attend this hearing?

A. No, sir.

Q. Did you get any notice from anybody except Mr. Meagher?

A. Mr. Meagher and Mr. Guthrie.

369 Q. Well, Mr. Guthrie did not go to the Hoffman House to see you, did he?

A. No, sir.

Q. Mr. Meagher is the only one that talked to you about it?

A. He was the only one who talked to me about it, yes, sir, previous to yesterday.

Q. When did Mr. Meagher meet you at the Hoffman House and ask you to come over here to testify?

A. Yesterday forenoon.

Q. About what time?

A. About 10:30.

Q. Did you come over here after that yesterday?

A. I beg your pardon?
Q. Did you come over here yesterday to Mr. Guthrie's office?
A. Yesterday, no, sir.
Q. Yes.
A. No, sir.
Q. Oh, his request was that you should come today and testify?
A. Yes, sir.
Q. Did Mr. Meagher talk to you about anything he expected to prove by you at this hearing?
A. I don't recollect what he expected to prove.
Q. How long did he talk to you at the Hoffman House?
A. Some time.
Q. About how long was he there?
A. I was with Mr. Meagher nearly all day yesterday.
Q. At the Hoffman House all the time?
A. No; I was at the Hoffman House about half an hour.
Q. Then where did you go?

Mr. MEAGHER: That is objected to as incompetent, irrelevant, immaterial and impertinent.
The EXAMINER: Let the objection be noted.

Q. And then where did you go?
A. We went to lunch up at Washington Heights at Mr. Billings' stable.
Q. Did you discuss this case yesterday?
A. Yes, sir.
Q. Did Mr. Meagher say anything about what he expected
370 to prove by you here to-day?
A. He talked the case over generally.
Q. Tell me what he said?
A. I don't recollect the details of our conversation.
Q. Well, in a general way state what—as near as you can remember, state the substance of what he said?
A. It would be impossible for me to do so.
Q. Did he ask you as to how many mains the People's Company had in the streets of the City of Chicago? How many miles?
A. I think he did.
Q. What did you tell him?
A. I gave him the information.
Q. What did you say, as near as you can remember?
A. Just what I said here to-day, about.
Q. Well, repeat it as near as you can, what you told Mr. Meagher yesterday as to the number of mains?
A. About how many miles of mains?
Q. Yes.
A. I think I told Mr. Meagher there were approximately 2,000 miles of mains.
Q. Was anything said in this talk with reference to the amount of gas that the People's Company manufactured in the City of Chicago?
A. Yes.
Q. What did you tell Mr. Meagher yesterday about that?

A. I told him that there were about eleven billion cubic feet a year sold by the People's Company.

Q. What else did he ask you about?

Mr. MEAGHER: That is objected to if your Honor please, as incompetent, immaterial, irrelevant and improper, and I shall direct the witness to refuse to answer the question. Where a question is devoted to a specific thing which is proper cross-examination, I will not object, but where he asks the broad question: "What else did you talk about" I object, and I shall instruct the witness to refuse to answer such a question as that.

371 The EXAMINER: The objection and the instruction of counsel will be noted.

Q. Now, will you go ahead and tell the Court what further talk—what other questions Mr. Meagher asked you with reference to what you have testified about here to-day?

A. Under instruction from counsel——

Mr. GUTHRIE: Oh, no, no, Mr. Meagher does not object to that.

The WITNESS: I beg your pardon.

Mr. GUTHRIE: I don't understand that Mr. Meagher objects to that.

The WITNESS: I didn't understand the question. I assumed it was the same.

Mr. TONE: I assume you don't know what Mr. Meagher is objecting to.

Mr. GUTHRIE: I do know the language of his objection.

Mr. TONE: All right.

Q. Well, do you want to answer, Mr. Knapp, or don't you? There are two theories here.

A. Whatever counsel instructs me not to answer I respectfully decline to answer.

Mr. MEAGHER: You put a proper question to him and there won't be any objection.

The EXAMINER: The question is now limited to the matter about which he testified?

Mr. TONE: I won't give any heed to your examination if I am asked about what is proper.

The EXAMINER: Read the question to the witness.

(Question read by the Reporter as follows: "Now, will you go ahead and tell the Court what further talk—what other ques-
372 tions Mr. Meagher asked you with reference to what you have testified about here to-day?")

A. I don't recollect any specific questions and answers, simply discussion of the case in general.

Q. Did Mr. Meagher ask you anything about how many customers the People's Company had in Chicago yesterday at this talk?

A. I think he did.

Q. And what did you say?

A. I told him there were upwards of 350,000.

Q. Did Mr. Meagher ask you anything about how you enforced the collection of bills from delinquent customers for gas?

A. I don't think he asked any such question.

Q. Do you know any one connected with the firm of Guthrie, Cravath & Henderson?

A. I met Mr. Henderson.

Q. When did you meet him?

A. Why, I should think some two years ago.

Q. Have you talked with him about this case?

A. No, sir, not at all. It was an entirely different matter. It was in connection with the Lake Superior Power Company that I had conversation with Mr. Henderson.

Q. Have you ever talked with Mr. Guthrie about this case?

A. Yes.

Q. When?

A. Yesterday afternoon.

Q. Where did you meet Mr. Guthrie?

A. At his house.

Q. What time was that?

A. About half-past four, I think.

Q. Who were present at that talk?

A. Mr. Meagher, Mr. Billings and myself.

Q. Was Mr. Brady there?

A. No, sir.

Q. Did you talk anything about this case to Mr. Guthrie at the time?

A. Yes, sir.

Q. Did you talk over any of the things that you and Mr. Meagher had discussed at the Hoffman House at Mr. Guthrie's house?

A. The same questions that you spoke of.

373 Q. When was the first talk you had with Mr. Meagher in reference to the things that you have told that he asked about?

A. Yesterday morning.

Q. That was at the Hoffman House?

A. Yes, sir; and during the day we spoke of it.

Q. When was the time he asked how many customers the company had; was that at the Hoffman House?

A. I don't recollect whether it was the Hoffman House or after he left the Hoffman House; it was during our discussion during the day.

Q. Was that before you met Mr. Guthrie?

A. Yes, I think he asked the question.

Q. And the question in reference to how many miles of mains the company had in the streets of the City of Chicago, was that also at the Hoffman House?

A. We discussed that matter generally.

Q. At the Hoffman House?

A. I am not prepared to say whether it was at the Hoffman House. It was during the day. We stayed a short time at the Hoffman House.

Q. Was it discussed also before you met Mr. Guthrie at his house?

A. Yes.

Q. How long were you at Mr. Guthrie's house?

A. I think about an hour.

Q. And did you discuss this case there?

A. Yes.

Q. And what features of it were discussed there?
A. Just the physical facts regarding the company.
Q. The questions that Mr. Guthrie has asked you to-day?
A. He asked me those questions, some of them.
Q. Mr. Meagher asked you some of them?
A. Yes.

Mr. MEAGHER: I object to that, if your Honor please, of putting the words into the witness' mouth as the counsel has done.
374 He has not said that I asked any of the questions on yesterday. The witness through inadvertence said yes.
The EXAMINER: Note the objection.

Q. And when you got through with Mr. Guthrie, whom did you leave the house with?
A. Mr. Meagher and Mr. Billings.
Q. Have you talked with Mr. Meagher in reference to this case of Mills against the People's Gas Light & Coke Company and the City of Chicago?
A. I have no recollection of any discussion.
Q. During the time it has been pending, you have discussed it, haven't you, with your counsel?
A. I may have done so.
Q. Well, haven't you?
A. I don't recollect any instance.
Q. When the suit was started, did you discuss it then with Mr. Meagher?
A. I have no recollection of discussing it with him.
Q. Did you not make a report to the stockholders at one of the annual meetings in reference to this case of Mills *vs.* the City of Chicago and the People's Gas Light & Coke Company?
A. Possibly; I don't recollect what was there.
Q. From whom did you get the information for that report?
A. From Mr. Meagher if from anybody.
Q. And your recollection now, if you refresh your recollection, do you recall that in that report you stated that Judge Grosscup had decided that the City of Chicago had no power to regulate the price of gas?
A. I don't recollect distinctly what was in that report.
Q. Well, weren't you interested in the outcome of this case as an officer of the company?
A. Certainly. In all cases affecting the company I am interested.
Q. Mr. Meagher told you how he expected the case of the
375 People's Company *vs.* the City of Chicago to come out, didn't he, in the Supreme Court of the United States?
A. Yes, sir.
Q. Did he ever tell you how he expected this case to be decided?
A. I don't recollect his ever telling me anything to that effect.
Q. As president of this company, how would you like to see this case disposed of?
A. What case do you mean, sir?
Q. Of Mills *vs.*—this Mills case?

A. I have not given that a thought, sir, enough to give you an answer.

Q. Don't you know whether you would like to see Mills win or lose this case?

A. I don't know the legal points involved. I am not prepared to say, to give any opinion.

Q. Well, don't you know whether you are opposed to Mills or in favor of Mills in this suit?

A. I don't know what you mean, opposed to him, sir. We were opposed to bringing the suit.

Q. But as president of this company, are you in favor of seeing Mills win this suit, or are you in favor of seeing Mills lose this suit in which we are now taking evidence?

A. I don't know the legal points involved, and I would have to ask my counsel all the legal points before giving an opinion on that.

Q. And you couldn't tell whether you are in favor of seeing Mills win or lose until you had consulted your counsel on the question?

A. No; not at the moment.

Q. Without consulting your counsel, you are unable to tell whether it would be for the best interests of the company to win or lose the suit now pending before Judge Grosscup? Is that right?

A. I have no specific opinion. I don't think it makes any difference as far as I am concerned. It is Mr. Meagher's matter.

376 Q. Did you have any talk with Mr. Guthrie after he made his argument in the Supreme Court of the United States in the case of the People's Company *vs.* the City of Chicago?

A. When was that?

Q. In 1904 some time?

A. After his——

Q. After he made his argument?

A. I don't recollect having any discussion with him on this point.

Q. Did you discuss the case with Mr. Guthrie, you and Mr. Meagher together, as to the case of the People's Gas Light & Coke Company *vs.* the City of Chicago, that Mr. Guthrie was to argue?

A. I don't recollect discussing it now.

Q. Did you meet Mr. Guthrie before he went to Washington to make the argument in that case?

A. Yes. I met Mr.——

Q. Where did you meet him?

A. I have forgotten the date. The first time I met Mr. Guthrie was in Chicago, when I went over to Judge Grosscup's Court, he was making an argument in the Mills case. After that I was introduced to Mr. Guthrie for the first time.

Mr. GUTHRIE: Was that the argument on the application to Judge Grosscup for an injunction.

The WITNESS: I don't recollect, Mr. Guthrie.

Mr. GUTHRIE: But it was an argument in the Mills case?

The WITNESS: In the Mills case before Judge Grosscup; yes, sir, in Chicago.

Mr. TONE: I would like to see the record. Have you the record in the People's case here? We stipulated that should be put in the record, and you said you would furnish a copy for use.

Mr. GUTHRIE: I think that is the only copy we have. (Handing a copy to Mr. Tone.) You have not got the files here, Mr. Master, have you?

377 The EXAMINER: Yes, I have, Mr. Guthrie.

Mr. GUTHRIE: Will you please give me the date when the application for an injunction and the demurrer was argued before Judge Grosscup, in December, 1903.

Mr. TONE: This is not the record in this case. This is another case.

The EXAMINER: Here are the files.

Mr. GUTHRIE: I find we have not got one. We borrowed that from the Law Institute Library.

Mr. TONE: I think I can get what I want out of here. Oh, this is the file in this case.

Mr. ASHTON: That was the file in the People's case.

The EXAMINER: I have only the file in this Mills suit. That is all. I have not any in the suit in the United States Court, except these arguments and briefs.

Mr. MEAGHER: What is the date you are looking for? What do you want?

Mr. GUTHRIE: The date of the argument before Judge Grosscup. My Recollection is, I think that was December 7th, 1903.

Mr. GUTHRIE: My recollection is December 7th, 1903. But it was in December, 1903.

The EXAMINER: Did Judge Grosscup render an opinion on that?

Mr. MEAGHER: Yes; and that was in January, 1904, I think.

Mr. GUTHRIE: December 5th is the correct date, Mr. Tone. That is the day the decree in the People's suit was amended——

Mr. TONE: December 5th, 1903.

Mr. GUTHRIE: And that was amended on the argument of the Mills case.

The EXAMINER: There is the motion. The order was not entered until 1904.

378 Q. It was in December, 1903, that you first met Mr. Guthrie, is that right?

A. It was the day he was arguing the case before Judge Grosscup.

Mr. MEAGHER: That appears to have been December 5th, 1903, by an order that the Master produces here.

Mr. TONE: Yes.

The EXAMINER: That paper is a motion, and then the decision was not rendered until the February following.

Q. And after the—was it before or after the argument before Judge Grosscup on this day, on December 5th, 1903, if the argument was on that day, was it before or after that that you met Mr. Guthrie?

A. It was after his argument.

Q. Where did you go to?

A. I met him in the court room there. I was introduced to him there.

Q. And did you have a consultation with him on that day in reference to the case in the Supreme Court of the United States of the People's Gas Light & Coke Company *vs.* the City of Chicago?

A. I may have had. I do not recollect.

Q. Do you recall going to Mr. Guthrie, Mr. Meagher and yourself going to Mr. Meagher's office that day?

A. No.

Q. How long did this conversation last on December 5th, 1903, with Mr. Guthrie?

A. I don't recollect regarding that conversation.

Q. Do you recall that on the same day a stipulation was entered —an order entered in the case of the People's Company *vs.* the City of Chicago amending the records?

A. I remember Mr. Guthrie and the Court discussed that matter.

Q. In reference to the old suit?

A. Yes; it was discussed in court that day.

Q. Mr. Guthrie represented the People's Company in that discussion, didn't he, on that day?

A. I don't know who he represented legally at that time.

379 Q. He has been retained as the attorney for the People's Gas Light & Coke Company at that time?

A. Yes.

Q. He appeared as attorney for Mr. Mills also there on the same day, didn't he?

A. I don't know who he appeared for except the Mills suit. He was arguing a case for the Mills suit. I was not aware he was appearing for us at all.

Cross examination by Mr. MEAGHER:

Q. Mr. Knapp, how did you come to go to Mr. Guthrie's house yesterday afternoon?

A. Why, you said you were going and took me along.

Q. Had you been requested to go there before I came to New York on yesterday?

Mr. TONE: That is objected to as leading and suggestive

The EXAMINER: The objection may be noted.

Q. Had you been requested? Read the question, Mr. Reporter.

Question read by the Reporter, as follows:

"Had you been requested to go there before I came to New York on yesterday?"

A. Yes.

Q. By whom?

A. A message from our—some one in my office. I understood it came from Mr. Guthrie.

Q. Requesting you to go to his house?

A. Yes, sir.

Q. And did you tell me of that message or did I ask you to go to Mr. Guthrie's house?

Mr. TONE: That is objected to as leading and suggestive.

The EXAMINER: Note the objection.

Q. Answer the question.

A. I certainly told you that I intended to go.

380 Q. In other words, you did not go there on my initiative?

A. No.

Mr. TONE: That is objected to as calling for a conclusion and as leading and suggestive, putting the words into the witness' mouth.

Q. Mr. Knapp, state whether or not you, as the president of the People's Gas Light & Coke Company, knew of the number of consumers that that company had, or about the number of consumers, prior to your talking with me on yesterday?

Mr. TONE: That is objected to as immaterial.

The EXAMINER: Note the objection.

A. I knew.

Redirect examination by Mr. GUTHRIE:

Q. Mr. Knapp, you have stated in answer to the questions put by counsel for the defendant yesterday that Mr. Guthrie had been retained by the People's Gas Light & Coke Company. Had Mr. Guthrie been retained by the People's Company in any other capacity than to argue the appeal before the Supreme Court of the United States?

A. None whatever.

Q. Do you recall the fact that your counsel, Mr. Meagher, was present at the Court at the time Mr. Guthrie was making his argument before Judge Grosscup on the application in this Mills suit for an injunction and on the argument of the demurrer of the city?

A. My recollection is that he was present.

Q. Do you recall that Mr. Meagher took part in the discussion in open Court on the question of the form of the decree?

Mr. TONE: That is objected to.

381 Q. (Continued). In the prior suit brought by the People's Company?

Mr. TONE: That is objected to as leading and suggestive.

The EXAMINER: Note the objection.

A. Yes.

Q. State as far as you can now recollect what the substance of the discussion was in regard to the form of the decree in the prior suit brought by the People's Company against the City of Chicago which was then pending on appeal in the Supreme Court of the United States?

A. Well, it was a question of jurisdiction, as I recollect, simply whether Judge Grosscup had jurisdiction of our case.

Q. Was there any discussion as to the form of the decree being the result of mistake or inadvertence?

A. Yes.

Q. State to the best of your present recollection what the discussion was?

A. Well, as I recollect in a general way, it was simply a question between yourself and Judge Grosscup whether the Court had juris-

diction or not, and the Court adopted some suggestion you made in regard to it. I have forgotten just the form of it. I do know that later on it was; some paper in the case was changed before the Supreme Court.

Q. Whom did you succeed as president of the company?

A. I succeeded Mr. Billings.

Q. And how long had Mr. Billings been president of the company?

A. For a good many years. I don't recollect how long.

Q. And what relation has Mr. Billings occupied to the company since you became president?

A. He was elected chairman of the Board of Directors at the time I became president.

Q. And has he held that office ever since?

A. Yes, sir.

382 Q. When in your testimony you have spoken of counsel of the People's Company to whom you turned over papers or whom you consulted or referred matters to, what counsel do you refer to?

A. I refer to Mr. Meagher.

Q. Did you know anything in 1902 and 1903 as to Mr. Mills' relation to the company or the extent to which he was interested in its securities?

A. I knew he was a very large stockholder from our books.

Q. Has your company contributed directly or indirectly to the expenses of this suit.

Mr. TONE: That is objected to as calling for a conclusion and as calling for a fact not within the knowledge of the witness.

The EXAMINER: The objection will be noted.

A. No, sir.

Q. Has your company, to your knowledge, agreed in any form or manner whatever, directly or indirectly, to contribute to the expenses of this suit or to indemnify Mr. Mills against the same?

A. In no way whatever.

Q. Can you recall the date when the payment was made to Mr. Guthrie for his argument in the Supreme Court of the United States?

A. I don't remember the date. I should say it was somewhere along in June, 1904.

Recross-examination by Mr. TONE:

Q. Did you say you got a message from your office that you were wanted in a case here to-day before you saw Mr. Meagher?

A. Yes, that I might be wanted.

Q. Who delivered the message?

A. One of our telephone men.

Q. What did he say?

A. He said he had a message from Mr. Guthrie that he

383 would—I might be wanted to-day, and he would like to see me at his house 4 o'clock Monday, if convenient.

Q. But you yourself never talked with anybody connected with Mr. Guthrie's office?
A. No, sir.

Mr. GUTHRIE: Now, I think we had better take an adjournment, and we will put on the next witness after the recess.
Mr. MEAGHER: It is 1 o'clock now.
Mr. GUTHRIE: That will be 2 o'clock.
Mr. MEAGHER: Can you make it half past 2? I have some matters I would like to take care of.
Mr. TONE: I would like to get through to-day if we can.
Mr. MEAGHER: Well, say 2 o'clock.
Mr. TONE: Still, if Mr. Meagher wants——
Mr. MEAGHER: I will be here at 2 o'clock. I will let the other thing go.
The EXAMINER: The stipulation was that the Master need not be present when the signatures to the depositions were made. Now, the record that I have at present has not been signed either by Mr. Mills or Mr. Knapp.
Mr. TONE: I would like to have the witnesses sign them but I will waive the presence of the Master.
The EXAMINER: That is what I want to call your attention to, that their signature should be attached.

After having read over and corrected the foregoing testimony the same is subscribed by me at New York, N. Y., this 11th day of January, 1906, in the presence of Francis J. Kearful.

GEORGE O. KNAPP.

Recess.

384 2 O'CLOCK P. M.

C. K. G. BILLINGS, a witness produced in behalf of the complainant, having been first duly sworn, testified as follow:

Direct examination by Mr. GUTHRIE:

Q. Please state your name, age, residence and occupation?
A. C. K. G. Billings; residence, New York; age, 44; Chairman of the Board of the People's Gas Light & Coke Company.
Q. How long have you been connected with the People's Gas Light & Coke Company?
A. In an official capacity for about twenty-six years.
Q. And prior to that what, if any, relation did you have to the company?
A. Well, I had been employed as an office boy at an earlier date than that at different times about the gas office. In fact, I spent considerable time in the gas office for some years prior to that.
Q. Is it or is it not a fact that your father before you was connected with the People's Company?
A. Yes, sir; from about its—from about the starting of the People's Gas Company he was president of it.

Q. And who succeeded him as president of the company?
A. I did.
Q. And when was that?
A. 1888.
Q. How long were you president of the company?
A. Until 1901.
Q. And who succeeded you as president?
A. Mr. Knapp.
Q. What position have you occupied since Mr. Knapp succeeded you as president of the People's Company?
A. Director and chairman of the Board of Directors.
Q. Are you familiar with the number of customers which the People's Company has at the present time in the City of Chicago?
A. Yes, sir.
385 Q. About how many?
A. About 350,000.
Q. What would be the effect, according to your practical experience in that business, of having to delay the collection of gas bills for a large number of months pending litigation as to the amount of the charge?
A. It would be very serious.
Q. To what extent would it be serious, to the best of your knowledge?
A. The extent would depend upon the number of months that you delayed in the collection, in my opinion.
Q. And if the collection were delayed for say six months, what amount of damage, according to your practical experience, would, in all probability, result to the company?
A. Several millions, I should say.
Q. And if the litigation were delayed a number of years would it be correspondingly—the damage or loss to the company, would it be correspondingly increased?
A. Yes, sir.
Q. At the time of the passage of the ordinance of October 15th, 1900, by the City Council of Chicago reducing the price of gas to seventy-five cents per thousand cubic feet, you were, as I understand, president of the company at that time?
A. Yes, sir.
Q. And where was your office at that time?
A. In Chicago at the main office of the company, and I was frequently in New York at our New York office.
Q. At that time, where did you reside in Chicago?
A. Well, in 1900, I am not certain that I did not move to New York in 1900. If not, it was shortly after that.
Q. What officer of your company had general charge of matters or questions growing out of this ordinance of October 15th, 1900?
A. In Chicago?
Q. In Chicago?
A. I did, and next was Mr. Knapp.
386 Q. What, if any, steps were to your knowledge taken by the People's Company with regard to such ordinance and the institution, if any, of legal proceedings?

A. Started suit in the United States Court.
Q. Do you recall the date when that suit was begun?
A. Well, I should say to my best recollection in December.
Q. Of the year 1900?
A. 1900.
Q. Can you recall the date when the case was first decided by Judge Grosscup?
A. About a year afterwards.
Q. Was it, to the best of your recollection, in January, 1902?
A. Just about that time.
Q. Do you recall that an amended bill was filed in that suit by the People's Company against the City of Chicago?
A. Yes, sir.
Q. And do you also recall that an argument—a second argument was had before Judge Grosscup?
A. Yes, sir.
Q. What was the result of the first argument which you have stated according to the best of your recollection was decided in January, 1902?
A. The decision of the court?
Q. The decision of the court? To what effect was such decision?
A. The decision of the court in that case, as I remember it, was that the court had no jurisdiction.
Q. And what was the decision in the second argument before Judge Grosscup in the suit of the People's Company against the City of Chicago?
Mr. MEAGHER: That is the suit you mean that Attorney-General Griggs was in?
Mr. GUTHRIE: Yes.
A. Subsequently, the court modified his decision, amended it.

387 Q. Who were the counsel who were first employed by the company in that litigation?
A. Mr. Meagher and Judge Moran.

Q. And afterwards in the litigation pending before Judge Grosscup, being the suit in the People's Company against the City of Chicago, what other counsel, if any, were retained?
A. The only additional counsel that we had in that litigation besides Mr. Meagher and Judge Moran were Attorney-General Griggs and Mr. Sheehan.
Q. Was not Judge Sears also acting as counsel in that matter?
A. I don't recollect that he was in the case at that time.
Q. In 1901 or 1902, was Mr. Guthrie, Mr. William D. Guthrie, of the City of New York, retained or engaged by your company in that suit or in any matter or other litigation?
A. No, sir.
Q. Did your company have any regular New York attorney?
A. No, sir.
Q. Were any other New York attorneys consulted about the matter of the ordinance or the pendency of the suit than ex-Attorney-General Griggs and Mr. Sheehan, to whom you have referred?
A. Not to my best recollection.

Q. It appears from the evidence that Mr. Guthrie argued with other counsel this appeal of the company in the suit brought by the company against the City of Chicago when the appeal was heard in the Supreme Court of the United States. Do you know when and how Mr. Guthrie was retained in that matter, and for what purpose he was retained?

A. He was retained upon the advice of Mr. Meagher, counsel for the gas company. It first came up on his recommendation in—just before Mr. Meagher sailed for Europe. This point came up either the very latter part of June or the first of July. I believe he sailed some time in the early part of July.

Q. That is, of the year 1903?

A. 1903.

Q. Prior to that time had Mr. Guthrie been retained in
388 any way by the People's Company in connection with any of these matters?

A. No, sir.

Q. What authority, if any, did you give Mr. Meagher, and when, with regard to employing Mr. Guthrie?

A. Mr. Meagher recommended the employment of Mr. Guthrie when he was here just before Mr. Meagher's sailing for Europe, and we gave him discretion to employ him if he saw fit. As I remember, he said he would think it over and decide while he was abroad and communicate with Mr. Guthrie if he thought advisable before he got back. I did not know Mr. Guthrie was employed until after Mr. Meagher did get back.

Q. And from whom did you get the information?

A. From Mr. Meagher.

Q. Has Mr. Guthrie been retained by your company, to your knowledge, for any other purpose in connection with any of these matters than the argument of the appeal before the Supreme Court of the United States?

A. No, sir.

Q. Has he been consulted or advised your company in regard to any of these matters except the appeal before the Supreme Court of the United States?

A. No, sir.

Q. Do you recall that in December, 1902, the company received a letter from Mr. Mills?

A. Yes, sir.

Q. Will you please look at the paper now shown you—strike that out, please. What knowledge did you have of the receipt of that letter by the company?

A. It was brought to my attention in the New York office and the letter shown me there. The letter was sent to Mr. Meagher to Chicago and a request sent him that he consider the matter and let us know his opinion and advice.

Q. Do you know what has become of the original letter?

A. I do not.

Q. Will you please look at the paper now shown you, being Com-

389 plainant's Exhibit No. 6, and state whether or not, to the best of your recollection, that is a copy of the letter which you saw?

Mr. TONE: That is objected to on the ground that the letter itself is the best evidence and that no proof of its loss or destruction has been made such as would justify the admission of secondary evidence.

The EXAMINER: Let the objection be noted.

A. I should say that that is a copy of the letter that was submitted at that time, to the best of my recollection.

Q. Have you caused any search to be made for the original letter?

A. No, sir.

Q. Was that letter produced at the Board meeting on January 29th, 1903, to the best of your recollection?

A. Yes, sir.

Q. And at that time it was in whose possession?

A. Mr. Meagher's.

Q. And since then have you seen the original letter?

A. I don't think I have.

Q. What, if anything, did you, as an officer of the company, do with regard to that letter, Complainant's Exhibit No. 6?

A. After it got in the hands of Mr. Meagher do you mean?

Q. No; before it got in the hands of Mr. Meagher; did you do anything in regard to the subject of that letter?

A. All I had to do with it was to have it forwarded to Mr. Meagher from our New York office.

Q. Was the subject discussed among the officers of the company according to your best recollection?

A. The only discussion had was probably between Mr. Knapp and myself that we would send that letter to Mr. Meagher and get his opinion at some future time on it.

390 Q. When was the first meeting of the Board of Directors of the People's Company held after the receipt of that letter from Mr. Mills, Complainant's Exhibit No. 6?

A. The day after we arrived from Europe, which was the 29th of January, 1904.

Q. When did you go to Europe?

A. On the 27th of December, 1903.

Q. 1903 or——

A. 1902. And the other date I said—excuse me, did I say 1904 or 1902?

Q. 1903 I think.

A. In answering the question when the Board meeting was after that, it was on the 29th of January, 1903.

Q. Who went abroad with you?

A. I went with Mr. Brady and Mr. Knapp.

Q. What was the nature of the trip? Business or pleasure?

A. It was business, gas business.

Q. Had the plans for this trip been made prior to the receipt of Mr. Mills' letter, Complainant's Exhibit 6?

A. Some time before that.

Q. Were you present at a meeting of the Board of Directors held—of the People's Company—held in the City of New York on January 29th, 1903?

A. Yes, sir.

Q. Was the subject of Mr. Mills' request for the institution of a new suit submitted to the Board at that time, and if so, by whom?

A. By Mr. Meagher.

Q. Will you please state as fully as you can now recall what occurred at that meeting?

A. The question of complying with the request in Mr. Mills' letter was brought up; the letter read; and Mr. Meagher strongly advised the directors not to comply with the request, and gave his reasons.

Q. Can you recall what reasons Mr. Meagher stated as the grounds or basis of his advice?

A. Two principal reasons I remember. One was that he had every confidence to win our own suit in the Supreme Court. Judge Grosscup having dismissed the bill for want of jurisdiction, he felt very confident of having Judge Grosscup reversed on that
391 point. Another reason he gave was policy of starting another suit in Chicago in view of the fact that this question was to be decided by the Supreme Court, and at that time there were a number of suits started by the traction company in Chicago and discussed in the papers and unfavorably to the traction interests, claiming—the papers claiming, some of the papers claiming that the traction people were throwing obstacles in the way of having their case decided on its merits. The spring election was coming along and Mr. Harrison was up for re-election. He was seeking an issue to run his campaign on. He made the traction interests of importance in his election. We did not want him to also run his campaign on the gas question. And this was urged as one reason why we should not start another suit at that time.

Q. Was anything said at that time in regard to the possibility of a new suit by the company prejudicing the presentation of the case in Washington?

A. Yes, sir.

Q. What did Mr. Meagher say upon that subject?

A. As I recollect, Mr. Meagher said that the starting of this suit would become known to the—could not but help to become known to the judges of the Supreme Court and might have its influence upon them.

Q. Did he state in what way it might have an influence?

A. That we would—it would be an evidence of weakness on our part on the points that we had relied upon in our suit to start in and start another suit.

Q. Did Mr. Meagher state anything to you in regard to the views of his associate counsel, and if so, what and who were his associate counsel?

A. He stated that Judge Moran fully concurred in these views with him.

Q. Did he refer to any other counsel as——

A. Well, in general, I remember that he stated that the
392 associate counsel agreed with him, and he brought direct word from Judge Moran who was then in Chicago.

Q. In December, 1902, and January, 1903, did you have any knowledge as to the extent of Mr. Mills' interest in the People's Company?

A. Yes, sir.

Q. What knowledge did you have upon that subject?

A. I knew he was the largest individual stockholder of the People's Company, or, in other words, that more stock was in his name than any other individual.

Q. When did you first hear that Mr. Mills had retained or purposed to retain personal control?

A. Upon receipt of his letter.

Q. Who gave you the information?

A. The letter, or I must have been told by some one.

Q. Did you have any other information upon that subject?

A. No, sir.

Q. To your knowledge has the company contributed in any way or form to the expenses of this suit?

A. No, sir.

Q. To your knowledge has the company agreed in any form or way to contribute to the expenses of this suit or to indemnify Mr. Mills in the respect of the expenses of this suit?

A. It has not.

Q. When did you first hear of the contribution made by Mr. Brady to the expenses of this suit?

A. At the time the testimony was taken here some few weeks ago.

Q. And from whom did you acquire that information?

A. I think from Mr. Meagher.

Q. Prior to that time, had you any knowledge or information upon the subject?

A. No, sir.

Mr. GUTHRIE: That is all.

Mr. MEAGHER: I would like to ask you, gentlemen, will you agree that so far as the testimony taken here to-day may be
393 taken in support of our answer to obviate the necessity of going over these things more than once.

Mr. TONE: Do you expect to offer any evidence independent of this.

Mr. MEAGHER: I should say not, although I do not want to be bound by it, at the same time if I wanted to use this I would like the privilege of doing it.

Mr. ASHTON: I would like to suggest that this might expedite the whole matter. If you don't want to take testimony there would be no necessity in taking the time fixed by the court.

Mr. MEAGHER: Precisely, and if I find that this testimony will meet my answer I will let you know without delay.

Mr. TONE: That will be all right, and if we then conclude to do that, we can make any arrangements that will be proper.

Mr. ASHTON: We only want a few days to take what we want to, and you may take this testimony and have it put in—be not put to the necessity of retaking, then there is no necessity of your taking forty days I assume?

Mr. MEAGHER: Oh, I won't do that. I tell you that now.

Mr. GUTHRIE: I should think the testimony being in it would be available for anybody.

Mr. TONE: I should think so.

Cross-examination by Mr. TONE:

Q. How long have you known Mr. Guthrie?

A. I met Mr. Guthrie at the argument of the case in December of 1903 at Chicago.

Q. How many times have you met him since that time?

A. Well, passed him half a dozen times.

394 Q. Did you see him yesterday?

A. Yes, sir.

Q. You were over at his house?

A. Yes, sir.

Mr. MEAGHER: When you say passed him, Mr. Billings, what do you mean?

The WITNESS: I mean I have met him casually, half a dozen times possibly. I had never been to his office or house until yesterday.

Q. Who asked you to go to his house yesterday?

A. I got word from my office that Mr. Guthrie had sent word asking me to come to his house yesterday at 4 o'clock.

Q. Who told you at your office that Mr. Guthrie wanted you there?

A. My secretary told me over the 'phone.

Q. What is his name?

A. Mr. Phillips.

Q. Where were you at the time he telephoned you?

A. I think I was at Durland's Riding Academy.

Q. What time did you receive the message?

A. I think it was Saturday morning.

Q. And that was that you should see Mr. Guthrie at 4 o'clock on Monday?

A. Yes, sir.

Q. Did you see Mr. Meagher in the meantime?

A. Yes, sir; saw him yesterday morning.

Q. Where did you see him?

A. At the Hoffman House.

Q. Were you present when Mr. Knapp talked with Mr. Meagher at the Hoffman House?

A. Yes, sir.

Q. Were you all three of you there together?

A. Yes, sir.

Q. How long did Mr. Meagher talk with you and Mr. Knapp at the Hoffman House?

A. Well, not over an hour I should say, and possibly not over half an hour. We left there shortly after a few minutes conversation and went up to lunch.

Q. And you were with Mr. Knapp and Mr. Meagher con-
395 tinuously until you got to Mr. Guthrie's house yesterday?

A. Yes, sir.

Q. You were not subpœnaed as a witness here?

A. No, sir.

Q. Do you know Mr. Mills?

A. Yes, sir.

Q. How long have you known him?

A. Well, I guess about five years.

Q. How often have you seen him during that time?

A. To speak to?

Q. Yes.

A. Four or five times, possibly six.

Q. Were you ever at his office?

A. No, sir.

Q. Was he ever at your office?

A. Not to see me. He may have been in the gas office. I have no doubt he has been in Mr. Brady's office, and our offices are adjoining.

Q. Where have you met him these five or six times that you talked to him?

A. I met him once or twice in Mr. Flower's office. I met him once at a horse sale. I have met him once or twice on the street to stop him and speak to. I doubt if he would know me if he should see me now. Frequently, I have passed him and he did not recognize me.

Q. Have you talked with him since June, 1903?

A. If I have, it has been just a casual conversation, passing the time of day.

Q. Have you ever discussed this suit against the People's Company and the City of Chicago with Mr. Mills?

A. No, sir.

Q. At the time you received this letter of December 16th, 1902, how many days after the date it was written was that?

A. Well, I should say we had the letter within two days after it was written.

Q. Was that letter typewritten or was it——

A. As I remember it it was typewritten, but I could not swear.

Q. Do you remember whether Guthrie's letter head was used?

A. I do not remember the letter paper on which it was written.

396 Q. How did you know when you received the letter that Mr. Guthrie was Mr. Mills' lawyer?

A. Well, if it was not on the letter head I was told by somebody.

Q. Who told you?

A. That I could not state. And I don't swear positively—I don't

state positively that I did know that Mr. Guthrie was his attorney at that time.

Q. And the political situation at Chicago had a great deal to do with your not wanting any more litigation?

A. I thought that Mr. Meagher's argument was very forcible.

Q. And that you were exceedingly anxious to see no more suits started involving this gas question at that time. Is that right?

A. I thought that his advice was very good on this one case.

Q. But leaving out his advice now, how did you feel about it yourself; were you anxious to feel that no further litigation with the City of Chicago should be instigated at that time?

A. I was anxious that we should have no more trouble than possible at the time.

Q. Mills then was the largest stockholder, was he not?

A. Yes, sir.

Q. And a suit commenced by him would also be a bad thing, would it not?

A. Well, for the reason stated.

Q. For the same reason, would it not?

A. For the reason given by Mr. Meagher.

Q. Yes.

A. Yes, sir.

Q. And a suit commenced by Mr. Mills to attempt to enjoin the enforcement of that ordinance might fan into flame this public prejudice, is not that true?

A. I coincided with Mr. Meagher's opinion on that point.

Q. Now, did you go and see Mr. Mills and tell him the reason why you did not want another suit started?

A. No, sir, I did not see Mr. Mills on this question at all.

397 Q. Did you ever at any time ever say anything to him yourself or send anybody to him or write him or in any way inform him that it was a political consideration that was involved, and that it was unwise to have any further litigation at that time?

A. I sent him no special word about this suit whatever.

Q. How many shares of stock did you own in the People's Company at this time?

A. Well, I don't think that is material. I don't think—that is my own affair.

Q. How many shares of stock did you own in the People's Company at the time this letter of December 16th, 1902, was received by you?

A. I decline to state.

Mr. MEAGHER: That is objected to as irrelevant, incompetent and immaterial.

The EXAMINER: The objection may be noted.

Q. Is it not a fact that you owned and controlled in your own name and in the names of other persons more stock than Mr. Mills did at the time?

A. I have stated that Mr. Mills was the largest individual stockholder.

Q. No; but answer this question. Read the question, Mr. Reporter.

Question read by the reporter.

A. No, sir.

Q. Who was it that first suggested to you the appointment of Mr. Guthrie to represent your company in the Supreme Court of the United States in the case of the People's Gas Light & Coke Company *vs.* the City of Chicago?

A. Mr. Meagher.

Q. And when was that?

A. Just before he sailed for Europe, the latter part of June or the first of July, the first part of July, 1903.

398 Q. Did he say anything whether he had consulted Meagher about the question at that time?

Mr. MEAGHER: Please read that question.

Mr. TONE: I mean Mr. Guthrie. I will amend the question.

Q. Did Mr. Meagher say anything to you at that time as to whether he had consulted Mr. Guthrie about Mr. Guthrie being retained?

A. I don't recollect that he did.

Q. Well, you knew at that time that Mr. Guthrie was fighting the company, didn't you.

A. I knew at that time that Mr. Guthrie had the Mills suit, yes, sir.

Q. And that the People's Gas Light & Coke Company was a defendant in the suit?

A. Yes, sir.

Q. And that Mr. Guthrie had secured an injunction enjoining yourself and the officers and agents of the company and the company itself from complying with the ordinance?

Mr. GUTHRIE: I object to the form of the question as assuming——

Q. You knew that at the time, did you not?

Mr. GUTHRIE: (Continuing.) as calculated to mislead the witness when the proof clearly shows that the injunction in the Mills suit was not obtained for several months afterwards.

The EXAMINER: Let the objection be noted.

Q. You knew that a bill was filed, did you not, by Mr. Mills, had been filed at this very time seeking to enjoin the People's Gas Light & Coke Company and yourselves and your officers and agents

399 from complying with the ordinance of October 15th, 1900?

A. I knew that Mr. Guthrie was employed by Mr. Mills to take up that suit against the People's Gas Company.

Q. You knew what that suit was for, did you not?

A. Yes, sir.

Q. And you believed that that suit was detrimental to the company's interests, did you not?

A. I believed that we should decline to bring the suit ourselves at that time for reasons advanced by our attorney.

Q. Did you at that time believe that the suit which had already been instituted by Mr. Guthrie in behalf of Mr. Mills was detrimental to the company's interests, the People's Gas Light & Coke Company?

A. For the reasons stated by Mr. Meagher.

Q. You did?

A. At the time he stated them, I believed that it was unwise for the People's Company to start the suit.

Q. No; but in—at the time when you had this talk with Mr. Meagher about employing Mr. Guthrie as the counsel for the People's Gas Light & Coke Company, did you at that time believe that the suit which had been instituted by Mr. Guthrie for Mr. Mills against the People's Gas Light & Coke Company and the City of Chicago was detrimental to the interests of the company?

A. I don't know that I considered that question at all at that time. That was not up.

Q. Did it not occur to you that it was an important matter in selecting a counsel for the company as to whether you should employ a man who was friendly to the company or unfriendly to it?

A. Upon the advice of Mr. Meagher we selected or allowed him to select Mr. Guthrie.

Q. But did not the idea occur to you at once that it was unwise to retain for the company the very lawyer who had a suit pending against the company?

Mr. MEAGHER: That is objected to as argumentative, arguing with the witness.

The EXAMINER: Let the objection be noted.

Q. Just answer the question, please?

A. Mr. Meagher gave good reasons for the employment of Mr. Guthrie.

Q. Now, state what they were? What did Mr. Meagher say?

A. Mr. Meagher stated to us that he wished for additional counsel, and of the lawyers of New York he had selected Mr. Guthrie on account of his ability to conduct this lawsuit, and upon the advice of Mr. Meagher and upon his stating that he was familiar with the ability of Mr. Guthrie, we authorized him to employ him.

Q. Judge Moran gave the opinion that you could win that case in the Supreme Court of the United States; is that right?

A. Yes, sir.

Q. What did Mr. Guthrie say about that question?

A. After he was employed by the People's Company?

Q. Yes.

A. As I recollect it he said that the case could be won.

Q. Could be won?

A. Yes, sir.

Q. That Judge Grosscup's judgment would be reversed?

A. Yes, sir.

Q. When was that, about?

A. Well, I don't know that I can fix the date; some time after he was engaged as counsel.

Q. When did you first see him after he was engaged?
A. I could not fix that date. It was——
Q. Well, as near as you can; the season of the year if you cannot give the date?
A. I should say September; the latter part of September or the first of October.
Q. Where were you at the time you had this talk with Mr. Guthrie?
A. I don't know that I remember that.
401 Q. New York or Chicago?
A. Possibly New York.
Q. Who was present?
A. That I don't remember. I have had very few talks with Mr. Guthrie, and they have not been of any duration, and I could not recollect.
Q. Was Mr. Meagher present?
A. Probably he was, but I would not say.
Q. Did Mr. Guthrie tell you more than once that he thought the case would be won in the Supreme Court of the United States?
A. Possibly he has up to date, but I don't recollect distinctly.
Q. This one time is the only time that you now distinctly recollect?
A. I have a recollection of his telling me once.
Q. Had you ever asked Mr. Guthrie if he could win this Mills suit?
A. I don't think I ever did.
Q. Did he ever express any opinion as to whether he could win or lose?
A. I don't remember any conversation of that kind between us.
Q. Have you any interest in the outcome of this case so far as any desire that one party should win or lose?
A. My wish is now that the case should be won. To decide the price question.
Q. You mean that Mr. Mills should win?
A. Yes, sir.
Q. Your counsel here, however, has filed an answer praying that the suit may be dismissed. Did you authorize him to file such an answer?
A. Not specifically that I know of. He has discretion in these matters.
Q. But personally you would like to see Mills win this case?
A. Yes, sir.

Redirect examination by Mr. GUTHRIE:

Q. Mr. Billings, I understand you to state that the first time you ever met Mr. Guthrie was in December of 1903 at the
402 time the case was being argued by Mr. Guthrie before Judge Grosscup; is that the fact?
A. Yes, sir.
Q. Then, if you have, on cross-examination, testified that you had

any conversation with Mr. Guthrie in September or October before that December was it or was it not an error?

Mr. TONE: That is objected to as incompetent, as an attempt to impeach his own witness and as an attempt to cross-examine his own witness and as leading and suggestive.

The EXAMINER: The objection may be noted.

Q. Please answer?

A. I stated I had this conversation with Mr. Guthrie in September, following the December that I met you.

Q. Then you meant that this conversation that you had with Mr. Guthrie was in September or in October, 1904?

A. Yes, sir.

Q. Is it not a fact that you had this conversation with Mr. Guthrie after the Supreme Court of the United States had decided your case and affirmed Judge Grosscup?

Mr. TONE: That is objected to as leading and suggestive and as putting the words into the complainant's own witness.

The EXAMINER: Let the objection be noted.

A. I think it was upon your refreshing—upon thinking it over, after that decision.

Q. Now, Mr. Billings, was the conversation that you had with Mr. Guthrie in relation to the Mills suit or in relation to the suit brought by the company itself?

Mr. TONE: That is objected to again as leading and suggestive; as suggesting to the witness of the complainant the answer
403 desired and attempting to contradict the former evidence of the witness wherein he has stated that he had no conversation with Mr. Guthrie about the Mills suit.

The EXAMINER: Let the objection be noted.

Q. You may correct your testimony, Mr. Billings, in any respect to which I call your attention?

A. I don't remember having any conversation with Mr. Guthrie in regard to the Mills suit. If it was it was not an important conversation. It was simply casual remarks.

Q. Can you recall now that your recollection has been refreshed anything further in regard to the subject referred to in this conversation which you say you had with Mr. Guthrie in September or October, 1904?

A. I don't recall now the details of the conversation.

Q. Did you know that in January, 1904, Judge Grosscup had decided the Mills suit on the ground that the City Council didn't have power to pass an ordinance?

A. Yes, sir.

Q. Was that question of the power of the City Council and of the correctness of Judge Grosscup's decision ever discussed between you and Mr. Guthrie?

A. Well, as I say, if it was it was only casually. I did not dis-

cuss the legal points with Mr. Guthrie. That was a matter between Mr. Meagher and Mr. Guthrie.

Recross-examination by Mr. TONE:

Q. The time when Mr. Guthrie told you he thought he could win the case in the Supreme Court of the People's Company *vs.* the City of Chicago, was before the case was decided in the Supreme Court, was it not?

A. It was the latter part of 1904 or about September or October, as I remember it.

404 Q. Was that the time when Judge Moran also told you that he could win the case.

A. Judge Moran had told us that before that time.

Q. And was it about that time that Mr. Guthrie told you he could win the case, about the time that Moran said so?

A. After.

Q. About how long after?

A. Well, I don't remember the time.

Q. What is your best recollection?

A. Well, some months I should say.

Q. A few months?

A. Yes.

Mr. MEAGHER: Well, I object.

Q. And Judge Moran did not?

Mr. TONE: I object to interrupting.

Mr. MEAGHER: And I object to putting words into the mouth of the witness he did not say. He did not say a few months.

Mr. TONE: The reporter has taken down what he said.

Q. When did Judge Moran become connected with that gas case?

A. I could not state that.

Q. Well, Judge Moran did not argue the case in the Supreme Court of the United States?

A. I don't think he did, but I am not sure.

Q. And Judge Moran was not retained as counsel when Mr. Guthrie was hired in June or July, 1903, was he?

A I don't think he was connected with the case at that time.

Q. Your best recollection is that Judge Moran had severed his connection with the case when Mr. Guthrie came into it?

A. As I remember it.

The foregoing transcript of testimony has been read and corrected by me and is now subscribed by me in the presence of Hervey W. Booth, Examiner, January 12, 1906.

CORNELIUS K. G. BILLINGS.

405 ANTHONY N. BRADY, a witness produced in behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. GUTHRIE:

Q. State your name, age, residence and occupation?

A. Anthony N. Brady. I reside at Albany, New York; I am sixty-two years of age. I attend to a variety of matters that I am connected with, nothing special.

Q. Are you at the present time connected with the People's Gas Light & Coke Company?

A. Yes, sir.

Q. In what capacity?

A. As vice-president.

Q. Are you also one of the directors?

A. Yes, sir.

Q. How long have you been a director of the People's Gas Light & Coke Company?

A. I think from the formation of the present People's Gas Light & Coke Company.

Q. How long have you been an officer of the company?

A. The same length of time.

Q. How long have you been interested in the company as a security holder?

A. At least fifteen years.

Q. And you have been a holder of what kind of securities?

A. Stocks and bonds, both.

Q. When did you first hear of the receipt by the company of a letter from Mr. Mills, dated December 16th, 1902, Complainant's Exhibit No. 6?

A. I cannot answer as to date, Mr. Guthrie; I don't remember the date.

Q. Do you remember going to Europe in December, 1902?

A. Yes, sir.

Q. You remember the date when you sailed?

A. Yes, sir; December 27th.

406 Q. Prior to that date, had the matter, to the best of your recollection, been called to your attention, and if so, by whom?

A. It was called to my attention at a meeting of the board.

Q. Was the first time that the letter was called to your attention at a meeting of the board?

A. Yes.

Q. When was that meeting of the board?

A. I don't remember.

Q. Do you recall what occurred at that meeting of the board?

A. Only in a general way.

Q. State your present recollection as to what occurred at that meeting?

A. My present recollection is that the matter was referred to our counsel.

Q. Was your counsel present at that meeting?

A. I don't remember whether he was or not.

Q. Do you remember what occurred at that meeting; what any one said?

A. Not as to the individuals. I remember very well about the facts of the matter being discussed and finally referred to the counsel of the company.

Q. What action, according to your best recollection, was taken by the board itself at that meeting?

Mr. TONE: That is objected to on the ground that the record itself is the best evidence.

The EXAMINER: Let the objection be noted.

A. Well, I don't remember specifically anything more than it was decided to refer the matter to our counsel.

Q. When did you first hear that Mr. Mills had requested the company to take any action in regard to the ordinance of October 15th, 1900, passed by the City Council in Chicago?

A. The letter was the first information I had, the first knowledge.

Q. That was the letter from Mr. Mills requesting suit to be brought?

A. Yes.

Q. What is your best recollection as to the action, if any,
407 taken by the directors in regard to that letter from Mr. Mills?

A. You mean at that first meeting?

Q. I mean at any meeting Mr. Brady.

A. The directors at that time or later decided not to comply with Mr. Mills' suggestion.

Q. Do you know how or why they came to reach that decision?

A. My recollection is that it was by the advice of counsel.

Q. And did counsel state the reasons upon which he based that advice?

A. He did, but I don't remember the reasons.

Q. Subsequently, do you remember having any conversation with Mr. Mills on the subject of the *the* proposed suit?

A. I don't know that I fully understand what you mean.

Q. Did you at any time have any conversation with Mr. Mills upon the subject of the suit brought or to be brought by him?

A. I had a conversation with Mr. Mills after he brought the suit.

Q. Can you recall when you had that conversation?

A. Not as to time, no, except that it was after the suit was brought.

Q. What was the conversation?

A. It was in the shape of a suggestion from Mr. Mills that as I was a large stockholder in the company and as he was bringing the suit at his own expense, he suggested that I either contribute or get a contribution to help pay the expenses of the suit.

Q. Get contributions from whom?

A. From other large stockholders of record.

Q. At that time, how much stock in the People's Company did you own?

A. I think it was something more than 16,000 shares.

Q. That would be $1,600,000 par value?

A. Yes, sir.

Q. Were you then the second largest stockholder?
A. As I recollect it, yes.
Q. And what did you say to Mr. Mills at that time?
A. I agreed that he ought not to be expected to pay the
408 whole amount, and told him I would send him a contribution, and I did.
Q. Did Mr. Mills at that conversation suggest any amount which should be contributed towards the expense of the suit?
A. As well as I understand, at that time he said that if I sent him $5,000 that would be satisfactory.
Q. And what did you then do?
A. I sent it to him.
Q. A personal contribution?
A. Entirely so.
Q. Had the Company anything to do, directly or indirectly, with that contribution?
A. Not at all. They were never consulted about it.
Q. Did you ever advise any of the officers of the company that you had made this personal contribution toward the expenses of this suit?
A. I don't think so. If I did it was without any suggestion of their returning it. I don't think I did.
Q. Did you ever mention the matter to the counsel of the company, Mr. Meagher?
A. No, I don't think I did.
Q. It has been testified by Mr. Mills that several weeks ago you had called upon him in relation to the subject of this contribution or payment. He has testified it was $5,000, contribution or payment of $5,000. Do you remember calling upon Mr. Mills recently in regard to the matter?
A. Yes, sir.
Q. How came you to call upon Mr. Mills?
A. Well, some suggestion made by someone, I don't know, it might have been by yourself, that it was not clear whether that was a contribution, a personal one, or one from the company, and I called to see Mr. Mills as to what his understanding was.
Q. And how did you find Mr. Mills at that time?
A. Well, I found Mr. Mills—he was not sure about anything, appeared to have lost all recollection of the conversations and everything else connected with it, excepting the fact that I had contributed.
409 Q. Mr. Brady, has the People's Company, to your knowledge contributed in any way to the expenses of this suit brought by Mr. Mills?
A. They have not.
Q. Has the company, to your knowledge, made any agreement with Mr. Mills or anybody else to contribute to the expenses of this suit or to indemnify Mr. Mills?
A. They have not to my knowledge.

Cross-examination by Mr. TONE:

Q. How many shares did Mr. Billings own at the time when you paid this $5,000?
A. I don't know, not now.
Q. Mr. Mills at that time was a large stockholder, was he?
A. Yes, sir.
Q. You say you were the second largest?
A. Well, as I understand it. I would not be quite positive as to that.
Q. Not knowing how many shares Mr. Billings owns, you could not tell whether you were the second largest or not, could you?
A. Not very well.
Q. Mr. Billings owns a good deal of stock, doesn't he?
A. I think you can get that information from Mr. Billings better than from me.
Q. No; he would not tell us.
A. I cannot tell you.
Q. Have not you any idea at all as to how much stock Mr. Billings owns in the People's Gas Light & Coke Company?
A. I have not.
Q. Has he ever voted at a stockholders' meeting?
A. Oh, I presume so.
Q. When you were present?
A. I have not been present at a stockholders' meeting in a long time.
Q. I know, but you have been present at times at stockholders' meetings?
A. I know, but I don't remember those things. I don't remember who votes and how many shares they vote and all that sort of thing.
410 Q. Can you give us any idea approximately or otherwise as to how many stocks Mr. Billings owns or controls in the People's Gas Light & Coke Company which stands in his name or in the name of others for his benefit?
A. I cannot.
Q. What time was it that you had this talk with Mr. Mills about contributing to the expenses of the Mills suit?
A. It was along in May, 1903.
Q. What time in May?
A. About the 14th or 15th.
Q. How do you fix the date?
A. By the date I gave the check.
Q. Where were you when you had this talk?
A. I met him on Wall street.
Q. On the street?
A. On the street.
Q. Who started to talk?
A. Well, I think he did. I am not sure.
Q. What was the first thing that was said about the Mills suit against the company?
A. Well, the first conversation commenced about his asking me

about the business of the company and what they were doing, as he always did when we met.

Q. What did you say?

A. I gave him the information as I understood it.

Q. Have you got that check with you?

A. Yes, sir.

Q. May I see it?

A. Certainly. (Producing a check.)

Mr. TONE: I ask that that be identified as Defendant City of Chicago Exhibit 1.

Mr. GUTHRIE: What do you mean? Do you offer it in evidence?

Mr. TONE: Yes.

The EXAMINER: The check will be marked Defendant's Exhibit 1.

Mr. TONE: And it is:

411 No. 2203. NEW YORK, *May 14th*, 1903.

Central Trust Company.

Pay to the order of D. O. Mills $5,000 Five Thousand and no 100ths Dollars.

No. 54 Wall Street.

ANTHONY N. BRADY.

Endorsed on the back is endorsed: "Pay Bank of New York M. B. or order. D. O. Mills."

Stamped: "Paid at the Bank of New York."

Q. Was it on the day of the date of that check, being the 14th day of May, 1903, that you had this talk, or was it before that?

A. Just about that time. It might have been the day before. It might have been the same day.

Mr. TONE: May I take the files in this case?

Q. Who first said anything about contributions here? Was it Mr. Mills or yourself?

A. Mr. Mills.

Q. Now, what did he say?

A. Well, he said the cost would probably be expensive, and that while he was a large stockholder, he ought not to be allowed to pay all the expense, that other large stockholders ought to contribute.

Q. What did you say?

A. I agreed with him.

Q. Then what did he say?

A. Oh, I don't remember what he said especially. I simply agreed that I would send him a contribution, and I did.

Q. Was anything said as to the amount?

A. Well, I got an impression from what he said that $5,000 would be satisfactory, and I sent him that amount.

Q. Why did he say $5,000 would be satisfactory?

A. I don't know that he said that. I got that impression from what he did say.

Q. Anyway, your recollection is that the $5,000 was fixed by him?

412 A. I got the impression from what he said that if I sent $5,000 that would be satisfactory, and I sent him $5,000.

Q. When did you first hear that there was going to be a law suit here, one had been or was going to be commenced by Mr. Mills?

A. At that time?

Q. Yes.

A. I don't remember.

Q. At the time you had this talk had Mr. Mills—did Mr. Mills say anything about it, whether he had commenced the suit or not?

A. I understood he had commenced the suit; yes.

Q. Where did you get that understanding?

A. Oh, I don't know. I probably got it in a variety of ways. If there was a suit commenced at that time, I probably knew it from a variety of sources.

Q. Did Mills ask anybody else, to your knowledge, to make any contribution?

A. No, sir; not to my knowledge.

Q. Mr. Billings was a large stockholder wasn't he?

A. You can get that information better from Mr. Billings.

Q. Did you ask any other stockholder to contribute?

A. No, sir; I always intended to if Mr. Mills should come to me and say he had been to very great expense.

Q. Well, he never came to you at any time and requested a contribution, did he?

A. Except that time.

Q. Did Mr. Mills say how much money he had paid out?

A. No.

Q. Were you in favor of Mr. Mills commencing a suit at that time or were you opposed to it?

A. I did not know anything about it. That was left entirely to the attorneys; whatever advice they gave I was in favor of accepting; as far as the legal points were involved, I knew nothing about them.

Q. How long have you known Mr. Guthrie?

A. For a number of years.

Q. How many years?

A. Six, seven, eight, nine, ten years possibly.

413 Q. Has he been your attorney in any matter?

A. No, sir.

Q. Did you see Mr. Meagher between the time when Mr. Mills asked you to contribute and the time you sent this check of $5,000?

A. I don't remember whether I did or not.

Q. What is your best recollection?

A. Oh, I haven't any recollection on the subject.

Q. Did you tell him Mr. Mills wanted you to contribute to the expense of this suit?

A. I have no recollection whether I did or not. It would not be a matter I would be likely to speak to him about.

Q. You made the resolution at the directors' meeting that no

further suit be commenced against the City of Chicago, did you not?

A. What is that?

Q. You proposed that resolution at the directors' meeting on January 29th, 1903, that no further suit be commenced with the City of Chicago?

A. Will you put that question again please; I don't understand that.

Q. You proposed the resolution?

A. Oh, I don't know whether I did or not. The record will show.

Q. Well, if the record shows so, does that confirm your recollection?

A. Well, it would not except I would think that the records were correct. It would not add much to my recollection.

Mr. GUTHRIE: There is no doubt about it, Mr. Tone. We proved that at the other session. It is in evidence.

Mr. MEAGHER: It is in evidence.

Mr. TONE: I want the witness' recollection refreshed if that will help him any.

Mr. GUTHRIE: You just objected that the record would be the best evidence of what was done.

Mr. TONE: It was the best evidence, so far as the company is concerned.

414 Mr. GUTHRIE: All right. Have you got those minutes of that meeting, Mr. Master?

Mr. TONE: I have them right here. (Reading.) "The matter was discussed at length, and the following resolution, offered by Mr. Brady, seconded by Mr. Flower, on being put by the chair, was unanimously carried:

" 'Resolved, this company declines to accede to the request of Mr. D. O. Mills contained in his communication to the Board of Directors of this company, dated December 16th, 1902, for the reason that this board believes for this company to institute further legal proceedings to contest the legality of the ordinance adopted by the Common Council of the City of Chicago, dated October 15th, 1900, would excite public prejudice against this company, which, at the present time, it is deemed of great importance to avoid.' "

Q. Was that resolution offered by you?

A. Well, I assume so from the fact you are reading it there, but I have not any recollection on the subject. I don't remember resolutions I offered two years ago.

Q. Well, you thought it was of a good deal of importance to have Mills' proposition to have any further suits commenced voted down, didn't you, at the time?

A. What is that question?

(Question read by the Reporter.)

A. Oh, I don't remember what I thought at the time, but my resolution there would cover all that.

Q. Now, this resolution covered your own idea on the question

at the time it was proposed on the 29th of January, 1903, is that right?

A. I presume so.

415 Q. Now, had those ideas changed on the 14th of May, 1903, when you gave Mr. Mills a check for $5,000?

A. What is that?

Q. Had your idea with reference to the propriety of commencing a suit against the City of Chicago to contest the ordinance changed on the 14th day of May, 1903, when you gave Mr. Mills a check for $5,000?

A. Probably not.

Q. Did you think it was a good thing to have a suit brought by Mr. Mills for the enjoinment of that ordinance?

A. I don't suppose my opinion changed at that time, but Mr. Mills had brought a suit and wanted somebody to contribute to the expense.

Q. Yes, but don't you know that Mr. Mills had not brought a suit?

A. That he had not at that time?

Q. Yes. Don't you know that Mr. Mills' suit was not commenced until June 8th, 1903?

A. No. As I said before, I don't recollect anything about the date.

Q. Well, you are evidently mistaken about that, because here is the original bill. Now, Mr. Mills, then not having commenced any suit,—I mean on May 14th, 1903,—did you try to dissuade him from beginning his suit?

A. No, sir. I didn't look on Mr. Mills as a man who would be dissuaded from anything where his interests were concerned.

Q. You never made any attempt at any time to dissuade him?

A. No, sir.

Q. Your interests and Mr. Mills' interests were the same, were they not?

A. As stockholders?

Q. Yes.

A. Certainly.

Q. You don't think Mr. Mills was influenced by any corrupt motives at the time, did you?

A. Not at all.

Q. Did you know when you gave Mr. Mills this check for $5,000 that you were contributing money that was to be used in bringing a suit against your own company in which you were to be

416 enjoined from complying with an ordinance of the City of Chicago?

A. I probably did not understand enough about the legal situation to know whether there were or not.

Q. Why did you not ask Mr. Meagher about it, your counsel?

A. Mr. Meagher was not present.

Q. You had heard Mr. Meagher's views on the question already, had you not?

A. Yes.

Q. Mr. Meagher was opposed to Mills or anybody else commencing any further suits with the City of Chicago to enjoin the enforcement of the ordinance on account of public prejudice, isn't that so?

A. Yes, sir.

Q. So you paid this money knowing that you were helping Mills to begin a suit which counsel for the company had already informed you it was unwise to commence?

Mr. GUTHRIE: Unwise for the company to commence, Mr. Tone.

Mr. TONE: I object.

Mr. GUTHRIE: No; but follow the record.

A. Are you speaking of me as an individual or as I acted for the company?

Q. Just answer the question?

A. What is the question?

Mr. TONE: I object to counsel interrupting me.

Mr. GUTHRIE: I object to the form of the question as assuming what has not been proved. The testimony showing that the objection of Mr. Meagher was to the company beginning any new suit.

The EXAMINER: The objection will be noted.

Q. Did not you know, Mr. Brady, at the time when you gave Mr. Mills a check for $5,000 on the 14th of May, 1903, that
417 Mr. Mills was going to use that money to commence a suit to enjoin the company of which you were one of the officers from complying with an ordinance of the City of Chicago passed on the 15th day of October, 1900, reducing the price of gas. Didn't you know that?

A. I probably knew that he was, as a stockholder, of the opinion that he ought to commence a suit and that I as a stockholder ought to contribute to the expense without knowing just what the legal questions involved were.

Q. Did you not know it would be your duty as an officer of the company to defend this suit that Mr. Mills was about to commence against the company?

A. I did not.

Q. You knew they could not sue the company without—you knew Mills was going to sue the company, didn't you?

A. I don't suppose I clearly understood what Mr. Mills' suit was except he thought it was something he ought to commence to protect himself and the other stockholders.

Q. And without consulting Mr. Meagher or any one else, you contributed $5,000 toward something which Mr. Mills thought ought to be done and which you thought ought not to be done?

A. I did not know what my opinion was as to whether Mr. Mills should commence suit or not. I did contribute $5,000 toward that, toward the expense.

Q. Had you read Mr. Mills' bill of complaint at the time?

A. No, sir; I never read it.

Q. Did you know what was going to be in it?

A. No.

Q. Had you talked with his lawyer about the suit, Mr. Guthrie, at that time?

A. No, sir.

Q. Did you not have some curiosity before you parted with $5,000 to know what kind of a suit was going to be filed against your company if you lent your aid to commencing it?

A. In Wall street, if you are asked for $5,000 for anything, the sum is so small you don't think anything of it.

418 Q. But that is not true of the consumers of gas in the City of Chicago where I come from. They are not so heavily burdened with the world's goods as you people down here?

A. Well, perhaps I have given many contributions to things I didn't believe in myself because other people did.

Q. And this was in the nature of a charitable contribution?

A. Not exactly charitable.

Q. Well, it was something you did not believe in but that Mr. Mills did. Is that right?

A. It was because Mr. Mills asked me to contribute. I did not take in the—I did not have any theory about it. If he had asked me to contribute to the Mills Hotel, it would have been just the same, or anything else.

Q. Anything that Mills wanted you to do, why you would do, is that right?

A. Where I was concerned at all, certainly. Where he really wanted a contribution from me for any reason, his own reason, which might be good, or someone else's reason which might be poor.

Q. Well, Mr. Mills had a resolution here—you were very friendly to Mills, weren't you?

A. Yes.

Q. You had absolute confidence in his judgment

A. Well, perhaps not on all things.

Q. Now, Mr. Mills wrote a letter to the company, didn't he?

A. I believe so.

Q. And wanted a suit commenced?

A. Yes.

Q. You offered a resolution against it, didn't you?

A. Yes, sir; it appears so.

Q. Did you ever see Mr. Mills and explain to him why you opposed the commencement of the suit that he was in favor of?

A. Not at all. That was not necessary. I did not consider it necessary to defend my action as a director to every stockholder in the company, whether large or small.

Q. You knew on January 29th, 1903, that Mr. Mills was represented by Mr. Guthrie, didn't you?

A. Well, I knew it some time. I didn't know whether it was that time or not.

419 Q. Did you know it when you contributed the $5,000?

A. I don't remember whether I did or not.

Q. Did you ever talk with Mr. Guthrie about this suit, the Mills suit?

A. Not to speak of. I think I may have met him once or twice

and laughed about it, something of that kind. Never thoroughly understood what it was.

Q. You laughed about it?

A. Well, just as you might meet anyone and say, "How are you getting on with the suit?" or something of that kind.

Q. You and Mr. Guthrie sort of looked upon it as a joke, is that the idea?

A. No, that is not the idea at all.

Q. Well——

A. I am not saying how Mr. Guthrie looked on it or how I did.

Q. Anyway, you laughed about it when you met him?

A. I say I might have done.

Q. Well, there was an injunction issued against you in Chicago, wasn't there, in December, 1903?

A. I don't know.

Q. January or February, 1904?

A. I don't know.

Q. Do you know whether there ever was or not?

A. I understand there was, yes.

Q. Who told you that?

A. Our counsel, probably.

Q. Were you ever served with a writ of injunction?

A. I think not.

Q. You obeyed the injunction?

A. Me?

Q. Yes.

A. I did not evade anything. I have been in my office in Wall street.

Q. I mean you have obeyed; you have not violated this injunction?

A. I presume not.

Q. Have you any feeling as you sit there as to whether Mills ought to win or lose this suit?

A. Well, I should like to see him win.

Q. Was that the way you felt about it when you contributed the $5,000 on May 14th, 1903?

A. Well, I don't remember how I felt then.

420 Q. Do you know that Mr. Meagher has filed an answer here asking that Mills' suit be dismissed?

A. No.

Q. As a director, did you ever authorize him to attempt to defeat the Mills' suit that you paid out your money to help along?

A. If the matter ever came up before the Board, I probably did. I don't remember. If I did it is a matter of record.

Q. You are willing, then, as one of the directors and officers of this company, to be enjoined from reducing the price of gas to seventy-five cents per thousand cubic feet, are you?

Q. What is that?

Q. As an officer and director of this company you are willing to be enjoined by Mr. Mills from reducing the price of gas to seventy-five cents per thousand cubic feet?

Mr. MEAGHER: That is objected to as irrelevant, incompetent and immaterial; as being a catch question, calculated to mislead and deceive the witness, whose willingness to be enjoined or not is immaterial, and could have no possible effect or relevancy.

The EXAMINER: The objection may be noted.

(Question read by the Reporter.)

A. If that means I am willing the company should get one dollar instead of seventy-five cents a thousand feet for gas, yes.

Q. Well, are you in favor of the injunction which now issued against the company and its officers enjoining the company and its officers from reducing the price of gas to seventy-five cents. Are you in favor that that injunction shall stand; is that the way you feel about it?

A. If I understand the question, yes.

Q. Yes. Well, that is the question.

421 Redirect examination by Mr. GUTHRIE:

Q. Mr. Brady, have you ever been reimbursed for the $5,000 contribution to Mr. Mills evidenced by Defendant City of Chicago's Exhibit No. 1?

A. No, sir.

Q. This check was drawn on the Central Trust Company on whose account?

A. Drawn on my account.

Q. Whose account is in that company?

A. My account.

Q. Your personal, individual account?

A. My personal, individual account.

Q. Did you, at the time you made this contribution to Mr. Mills, understand that if he was successful in his suit it would be to the benefit of the stockholders of the company?

A. Yes, I so understood it.

The EXAMINER: The check that has been identified and read into the record, do you wish the check also to be returned?

Mr. TONE: I am willing to stipulate that the record be accepted in lieu of the check.

Mr. MEAGHER: Yes.

After having read over and corrected the foregoing testimony, the same is subscribed by me at New York, N. Y., this 11th day of January, 1906, in the presence of Francis J. Kearful.

ANTHONY N. BRADY.

C. K. G. BILLINGS, recalled in behalf of the complainant, testified as follows:

Direct examination by Mr. GUTHRIE:

Q. Mr. Billings, do you desire to make any statement or
422 correction of your testimony, and if so, please do so?

A. I will add this, that at no time during the period re-

ferred to, say between 1902 and the present time, have I had or controlled to exceed 5,000 shares of stock of the People's Gas Light & Coke Company.

Cross examination by Mr. ASHTON:

Q. How about bonds of the company?
A. The number of bonds?
Q. You have a large investment in bonds?
A. Yes.

By Mr. TONE:

Q. What is the face value of the bonds of the company that you hold?
A. Upwards of $500,000.
Q. Have you been asked to contribute to the Mills suit?
A. No, sir.
Q. Have you got the same generous disposition about the donating of money without making any inquiry as is possessed by Brother Brady?
A. If I were a man of Mr. Brady's means and had the same connection with Mr. Mills, I don't think I would hesitate to send him $5,000 on anything he asked for.
Q. Have you any intention of sending any money to Mr. Mills to help him?
A. Not at the present time.
Q. Well, if he wants in this case do you intend to reimburse him?
A. The matter has not entered my mind yet.
Q. You would not want Mr. Brady to stand all the expense, would you?
A. Well, that would depend largely on whether they wanted any further contributions or not.

The foregoing transcript of my testimony, having been read by me, is now subscribed by me in the presence of Hervey W. Booth, Examiner, January 12, 1906.

CORNELIUS K. G. BILLINGS.

423 JAMES F. MEAGHER, produced as a witness in behalf of the complainant, having been first duly sworn, testified as follows:

Redirect examination by Mr. GUTHRIE:

Q. Please state your name, age, residence and profession?
A. James F. Meagher; 47; Chicago; attorney at law.
Q. You are now a member of what firm in the City of Chicago?
A. Sears, Meagher & Whitney.
Q. How long have you been a member of that firm?
A. Since April, 1902.
Q. Prior to the formation of that firm of what firm were you a member?
A. The firm of Winston & Meagher.

Q. And for how many years had you been a member of that firm?
A. Sixteen.
Q. For how many years, Mr. Meagher, had you been connected and in what capacity with the People's Gas Light & Coke Company?
A. For about sixteen years and as counsel to the company.
Q. In 1900 you were a member of the firm of Winston & Meagher, were you not?
A. I was.
Q. And as a member of that firm you had particular charge of the affairs of the People's Gas Light & Coke Company, did you not?
A. Well, with Mr. Winston I did.
Q. Do you recall the passage of an ordinance by the City Council of the City of Chicago October 15th, 1900, to take effect January 2nd, 1901, reducing the price of gas to seventy-five cents per thousand cubic feet?
A. I recall the ordinance. I think it was to take effect January 1st, 1901.
Q. What, if any, steps or legal proceedings were taken by the People's Company in respect of that ordinance?
A. A bill was prepared asking for an injunction to restrain the enforcement of that ordinance. That bill, as I remember
424 it, was prepared by Mr. Winston or by Mr. Winston and Mr. Shaw, another member of the firm of Winston & Meagher, and it was filed, as I remember, on the last day of the year 1900, December 31st, in the United States Court, setting up generally that the charter of the People's Gas Light & Coke Company constituted a contract between the people of the State of Illinois and the Gas Company.

Mr. TONE: I suggest here, to expedite time, that that bill has been put in evidence by agreement of all parties and it is unnecessary to restate its contents.
Mr. GUTHRIE: I think so too.

Q. Who were the counsel engaged in that original proceeding before the United States Court in the suit brought by the People's Company against the City of Chicago?
A. The bill was filed by the firm of Winston & Meagher. Before it was heard, Mr. Winston and I had dissolved our business relations and the case of the People's Company was presented by Judge Moran and myself, and the city was represented—the City of Chicago—by Mr. Browning.
Q. When was the decision rendered by Judge Grosscup in that first suit?
A. If my recollection serves, it was in January, 1902.
Q. After the first decision of Judge Grosscup which appears in the record in evidence, an amended bill was filed by the company, was it not?
A. It was.
Q. And on that amended bill a further hearing was had before Judge Grosscup?

A. There was.

Q. Who were the counsel employed in that matter on the second argument before Judge Grosscup?

A. Judge Moran, ex-Attorney-General Griggs, Mr. Sheehan, myself, and Judge Sears had done some work in the office in the preparation of the amended bill, but he did not, as I remember, appear in court on the argument.

425 Q. Did Mr. William D. Guthrie, of the City of New York, have anything to do with that litigation then pending?

A. Absolutely nothing.

Q. Was he ever consulted, conferred with or even spoken to upon the subject, so far as you know?

A. Not to my knowledge.

Q. When was the second decision rendered by Judge Grosscup in the suit brought by the People's Company against the City of Chicago?

A. I think it was in July, 1902, possibly the latter part of June. My recollection would be July, however.

Q. And thereupon the decree was entered in the form in which we find it in the record as such record originally went to the Supreme Court of the United States.

A. It was.

Q. Do you recall the institution of *quo warranto* proceedings in the State Court in Illinois against the People's Company involving the validity of its organization and the legality of the consolidation of other companies into the People's Company?

A. I do.

Q. When was that proceeding instituted?

A. In the summer of the year 1901.

Q. And with what result?

Mr. TONE: That is objected to as immaterial and irrelevant.

The EXAMINER: The objection may be noted.

Mr. TONE: And the record itself is the best evidence of any such decision that was handed down or should be material or competent.

The EXAMINER: The objection may be noted.

A. The case was contested at every point, was heard finally by Judge Haney to whom it had been sent after the repre-
426 sentative of the people, the State Attorney of Cook County, had stated he was unwilling the case should be heard by Judge Brown who was then calling the calendar upon which it was. Judge Brown sent it to Judge Haney. We argued it there. The petition was dismissed; the suit appealed to the Supreme Court and the Supreme Court affirmed Judge Haney's ruling in 1903.

Q. Could you give us the date when the court of original jurisdiction dismissed these *quo warranto* proceedings?

A. I think it was in October; I cannot give you the date; 1901. I can, of course, get it.

Mr. TONE: The same objection to that question.

Q. And can you give us the date when the *quo warranto* proceed-

ings on appeal were finally decided by the highest Court of Illinois in favor of your company?

Mr. TONE: The same objection.

A. It was in October, 1903; and as I recollect it, almost two years to a day from the time the court of original jurisdiction had decided in favor of the company.

Q. During the pendency of that litigation, what was your opinion as to the importance of the questions involved to the People's Company?

Mr. TONE: That is objected to as immaterial, what the mental operations of the witness may have been during the period in controversy.

The EXAMINER: The objection may be noted.

A. I thought they were vital.

Q. Do you recall when the appeal was taken and perfected to the Supreme Court of the United States in the suit brought
427 by the People's Company against the City of Chicago and decided by Judge Grosscup?

Mr. TONE: I submit that that is also in this record, is it not?

Mr. GUTHRIE: Yes, but I will refresh——

A. My recollection is that I filed the record in the Supreme Court in Washington in September, 1902.

Q. So that in December, 1902, and January, 1903, the company had pending the appeal in the suit which it had brought against the city in the Supreme Court of the United States and the appeal in the *quo warranto* proceedings in the highest court in the State of Illinois?

A. That is right.

Q. Will you please look at Complainant's Exhibit No. 6 now shown you, and state when you first had any knowledge of any communication from the complainant to the People's Company in connection with the Ordinance of October 15th, 1900?

A. I think the first I knew of it was the receipt of a letter, the original of the one I now hold in my hand. I am referring to Complainant's Exhibit No. 6, the letter dated December 16th, 1902, signed by D. O. Mills and addressed to the Board of Directors of the People's Gas Light & Coke Company.

Q. From whom did you receive that letter?

A. I cannot remember that, whether it came from Mr. Knapp or Mr. Billings, or whether it came in the usual routine and following a not unusual custom, which is to forward letters and communications to me which reached the New York office and are simply forwarded to me in Chicago without comment or anything else.

Q. According to the usual custom, if such a letter had been sent originally to Chicago, would it be returned to New York to the executive officers here before being submitted to the counsel?

428 Mr. TONE: That is objected to as to what the customary way of doing business is incompetent and immaterial.

The EXAMINER: The objection may be noted.

A. I would like to have that question read.

Mr. GUTHRIE: I will put another question.

Q. What was the usual custom of the company, if you know, in regard to communications received at the office in Chicago as to whether or not they would be referred to New York?

A. Well, if they were communications relating to legal matters, they would be——

Mr. TONE: The same objection.

The WITNESS (Continuing): Handed over to me at once without reference to the New York office. I may say in that connection and by way of explanation that I suppose I have been in New York twice a month for the last four years. I am sure I have.

Q. And has this been on business of the People's Company?

Mr. TONE: That is objected to as immaterial.

A. Almost exclusively, although I have, of course, had other business here.

Q. What has become of the original letter?

A. I do not know. I have made a search for it in my office personally. I have had at least two clerks make independent search for it. I have moved my office since I first received that letter and we have been unable to find it. I thought I got a reference to it as having been returned to the main office of the company in Chicago, but I have been unable to find it there, although at my direction an exhaustive search has been made by the secretary in
429 Chicago for the letter without avail. I have searched in my own office and I have had my clerks search for it there, and the secretary of the People's Company in the Chicago office tells me that he has been unable to find it among the files. It must have been mislaid in the multitude of papers in the office or lost during the time we were moving.

Q. To the best of your present recollection did you have the original letter in your possession at the time of the Board meeting, January 29th, 1903?

A. I did.

Q. And you have had it in your possession since then?

A. I cannot remember that, maybe I have. That is, I have no distinct recollection of having it since then, while I have a distinct recollection of where I stood at the meeting in the Board room on January 29th, 1903, and held the letter in my hand and discussed it.

Q. To the best of you present recollection is that exhibit a true copy of the original letter which you had in December, 1902, and January, 1903?

A. It is.

Q. When did you first hear of Mr. Mills' connection with the company or of his interest therein?

A. Well, I think I have known for some years that he was the largest stockholder in the company.

Q. When did you first hear that Mr. Mills had consulted counsel?
A. I think it was the receipt of this letter.
Q. When did you first ascertain that Mr. Mills had consulted Mr. Guthrie or Mr. Guthrie's firm?
A. My recollection is that it was about Christmas time. I think——
Q. 1902?
A. 1902. I think I came to New York to see the directors, because the majority of them were going to Europe and that I had this letter with me. I don't know whether I called up Mr. Mills on the
430 telephone or whether I went to his office to ask him about it or how I learned that Mr. Guthrie was his counsel.
Q. Now, about this time, did you have any conferences with Mr. Guthrie upon the subject?
A. After the receipt of this letter I did.
Q. How many, to the best of your present recollection?
A. Well, I should say certainly two and possibly three.
Q. Do you recall the subject of those conversations?
A. Generally, I do.
Q. And what, according to your best recollection, was the substance of the conversation between you and Mr. Guthrie on the subject of having a new suit brought by the company in view of the dismissal of the other suit?

Mr. TONE: That is objected to as incompetent and immaterial and as mere hearsay and self-serving declarations between the counsel for the People's Gas Light & Coke Company on subject matter which is attempted to be made favorable to their own interests.
The EXAMINER: Let the objection be noted. I take it that all this will be taken subject to this same objection.
Mr. TONE: All right.

A. I was opposed to the company bringing the suit, and I think, as I remember it, you were very firm in the position that another suit should be instituted and we disagreed about it.
Q. Do you remember what Mr. Guthrie stated as the reason why, in his opinion, a new suit should be brought?

Mr. TONE: Same objection to that.
The EXAMINER: It may be noted.

A. Well, I thought that the questions which would be
431 raised in a new suit were already raised in the pending suit. Judge Moran agreed thoroughly with me on that proposition. Judge Sears also agreed with me on the proposition. I think, Mr. Guthrie, your position was that the Supreme Court might not decide anything but the question of jurisdiction and would not decide the question of power or the charter contract. I think I wanted the advantage of reversing Judge Grosscup; that I felt confident that we could reverse him and that I felt if he were reversed it would be to the great advantage of the People's Company and that it would be to the benefit of the company in its dealings with the city, and with the people of the City of Chicago. That, I think, as I remember, were the differences between us. I believe you made the point that delay

might not be to our advantage and that you thought this suit should be brought at once; and I said, "I don't think it should be because it might be the equivalent of abandoning our appeal, and in any event if we brought another suit the point would be made in the Supreme Court of the United State that we had no confidence in our appeal as was evidenced by the fact that since perfecting it we had commenced another suit in another court." I think there were times when the argument became a little heated.

Q. Did you communicate to Mr. Guthrie at that time the views of your associates Judge Moran and Judge Sears?

A. I think I did. I know we went over it very thoroughly.

Q. And did you advise Mr. Guthrie of the substance of the opinion that you intended to express to the Board of Directors upon the subject?

A. I think at the last time I talked with you. I think the last time I said to you that I should advise the Board not to comply with the request.

Q. Do you remember a meeting of the Board of Directors
432 of the People's Gas Light & Coke Company, held in the City of New York on January 29th, 1903?

A. I do.

Q. Who was present at that meeting?

A. The full Board of Directors and myself. I will give you the names if you wish: Mr. Billings, Mr. Brady, Mr. Knapp, Mr. Ferguson and Mr. Flower and myself.

Q. Will you please state what occurred at that meeting according to your best recollection?

A. As I remember the circumstances, the request of Mr. Mills was read to the Board. I stated that it had been forwarded to me by either Mr. Billings or Mr. Knapp; that I had examined the question with great care, not merely alone, but in conjunction with Judge Moran and Judge Sears; that I had gone to Judge Moran's office at least twice in relation to it and he had been to our office once. Judge Sears, my partner and I had been over it a number of times. I think I stated to the Board that I had been in conference, or at least in negotiation with Mr. Guthrie about it, and that after a thorough examination of the question I felt constrained to advise the Board not to comply with the request, because, in my opinion, we would be sure to reverse Judge Grosscup.

That would be a great tactical advantage at least. That I thought, furthermore, it would be unwise from the standpoint of policy to institute another suit, because the public would at once say that we were simply trying to hamper and complicate the situation by numerous suits. I said also that if we were to bring the suit I felt the fact would certainly get to the Supreme Court of the United States on the hearing of our appeal, and I thought it would at least in some degree prejudice us or might affect us in that Court, and I therefore advised against the institution of the suit and urged
433 as strongly as I knew how that Mr. Mills' request be not complied with.

I stated to the Board that the opinion was not alone my opinion, but was the opinion of Judge Moran and of Judge Sears.

We have no doubt that it would be a mistake to comply with Mr. Mills' request and I advised against it. At that time we had the *quo warranto* suit pending, as I remember. There was also pending what were known as the Hale cases. Those were some cases that were started in Chicago——

Mr. TONE: That is objected to. The record itself is the best evidence, and it is incompetent and immaterial to the issues in this case.

The EXAMINER: Let the objection be noted.

Q. Will you please state briefly what issues affecting the company and the questions involved in this litigation were in any way involved in these so-called Hale suits?

Mr. TONE: The same objection.

The EXAMINER: Let it be noted.

A. The Hale suits briefly were instituted for the purpose of compelling the People's Gas Light & Coke Company to sell gas for less than $1 a thousand in the City of Chicago.

Q. At this meeting of the Board of Directors, do you recall whether anything was said in regard to the fact that pending the appeal to the Supreme Court of the United States there was a stay covered by injunction bonds?

A. Yes, I called attention to that fact, that an injunction had been granted, issued out of the Circuit Court of the United States, which protected the company pending the appeal, and from every consideration that I was able to give the matter, I thought it would be unwise to commence another suit as requested by Mr. Mills.

Q. Do you remember the date when this suit by Mr.
434 Mills was brought?

A. I think it was June the 8th, maybe June 5th, 1903.

Q. It appears in evidence that Mr. Guthrie was associated with you as counsel for the People's Company in the argument of the People's Company's case in the Supreme Court of the United States. Will you please state when and how Mr. Guthrie came to be retained to argue that case in the Supreme Court of the United States?

A. Well, the case was necessarily of vital importance to the company. It had been argued in the first instance by Judge Moran and myself, and we had lost. Subsequently, on the amended bill, it had been argued by ex-Attorney-General Griggs and Judge Moran chiefly, though Governor Sheehan and I were present in court. I don't remember whether the Governor spoke on the case or not. I think he did. And we lost again. I felt then that we should have some one to assist at least in arguing the case in the Supreme Court of the United States, and I felt that I wanted somebody other than those who had already argued and appeared. And as I remember it, I suggested to Mr. Billings and to Mr. Knapp, and I think Mr. Brady, that I wanted help in the Supreme Court, that I was badly run down—the doctors had ordered me to Europe, Carlsbad, and

the case would come on at the October, 1903, term, and I wanted some help. There was some discussion of a tentative character, however, various names were mentioned, and I think I suggested your name, and finally I was authorized to retain you in that case to argue it.

Q. When was Mr. Guthrie retained to argue the case in the Supreme Court of the United States?

A. July or August, 1903.

Q. Prior to that time had Mr. Guthrie ever been retained by the People's Company in connection with any of the litigation which has been referred to?

A. No.

435 Q. Prior to that time, had you ever consulted with Mr. Guthrie on behalf of the People's Company in regard to any such litigation?

A. No.

Q. Prior to that time had you consulted with Mr. Guthrie or discussed the subject with him other than in his capacity of counsel for Mr. Mills?

A. No.

Q. Mr. Meagher, is it or is it not the fact that by reason of your illness it was necessary for you to make arrangements in the summer of 1903 for the preparation of the brief in the Supreme Court of the United States?

Mr. TONE: That is objected to as calling for a conclusion and as incompetent and immaterial.

The EXAMINER: The objection may be noted.

A. I think so.

Q. What, if any, reason was there why Mr. Guthrie was retained at that particular time.

A. As I say the doctors had ordered me to Carlsbad for the cure; I was going; I had filed the transcript in the People's case, being the one that was filed by the People's Gas Company in the Supreme Court, the Clerk's office, in September, 1902. It appeared that the case would be reached in the October, 1903, term, and it was expected that it would be reached rather early. I had to go away. I felt that I wanted some help to prepare the brief and argument in that case in the Supreme Court, and I mentioned it to Mr. Brady and Mr. Billings and Mr. Knapp. They agreed after some discussion that I might retain Mr. Guthrie if I thought well to do so.

Q. Do you recall, Mr. Meagher, that the complainant's counsel, Mr. Guthrie, and his associates, endeavoring to bring the Mills' case on for argument early in June, 1903?

Mr. TONE: That is objected to as immaterial and as the
436 endeavor feature of it calls for a conclusion, and is incompetent.

The EXAMINER: Note the objection.

Q. Can you recall what occurred in June and how the case then came to be adjourned?

Mr. TONE: That is objected to as immaterial.
The EXAMINER: Let it be noted.

A. I don't recall what the specific reason in June was except that I do know the case went over to October, 1903, and was again adjourned, as I remember it, until December, 1903.

Q. Were you present in court when the case—when the complainant's application for an injunction and the demurrer of the city was argued in December, 1903, in this suit?

A. I was.

Q. Who were the counsel who appeared on that hearing?

A. Mr. W. D. Guthrie appeared for the complainant, Mr. Granville W. Browning appeared for the defendant City of Chicago, and I appeared for the defendant People's Gas Light & Coke Company.

Q. Do you recall what occurred upon that hearing in regard to the form or contents of the decree which had been entered upon Judge Grosscup's second decision in the suit brought by the People's Company against the City of Chicago, in which decree the bill of the People's Company had been dismissed for want of jurisdiction?

A. I think I do.

Q. Will you please state as briefly as you can what occurred?

A. I think that at the opening of court a statement was made of substantially the contents of the bill.

Mr. Browning made a brief opening as to the scope of his demurrer and then you took up the argument of the case on
437 the demurrer, and after talking for I should say may be an hour or possibly an hour and a half, at all events, shortly before the usual adjourning time for lunch, you called the attention of Judge Grosscup to the fact that you believed the court was wrong in dismissing the bill of the People's Gas Light & Coke Company for want of jurisdiction; whereupon, Judge Grosscup interrupted you and said, "I did not dismiss that bill for want of jurisdiction." and you said you thought you were correct in making the statement and that the record would bear you out.

Mr. TONE: That is all objected to as immaterial, and you cannot contradict the record by parole evidence.
The EXAMINER: The objection may be noted.

The WITNESS: (Continuing.) That Judge Grosscup then turned to Mr. Sampsell, the Clerk of the Court, and directed him to go and bring in the record showing the decree that was entered in the People's Gas Company case; that the record was thus brought in and laid on Judge Grosscup's desk in front of him; he read it over himself, took some considerable time to do it, during all of which time nothing was said by court or counsel; finally Judge Grosscup, straightening up, said: "Well, that is a mistake," referring to the decree; "I did not intend to enter that decree, that is wrong, that decree ought to be amended so as to correctly express what the Court intended to do," and after some discussion the record was amended so as to recite that, as I remember it—now, I have not looked at it since—maybe that is too broad—but certainly not for a long time,

but as I remember it, the record was amended to show that the
438 Court dismissed the bill on the merits as to the contract set up in the bill, being the charter of the People's Company, but without prejudice to the right to bring any other suit on the price or other questions that might be raised, and as I remember it, I think at the afternoon session then the record was amended to show that in that particular.

Q. Mr. Meagher, will you please state as briefly as you can what effect such amendment had upon the appeal in the Supreme Court of the United States?

Mr. TONE: That is objected to as immaterial and incompetent. It is not a subject of expert evidence, as to what effect anything has in the Supreme Court of the United States or any other Court. It is a matter of astrology and soothsaying and not a matter of expert evidence.

The EXAMINER: The objection may be noted.

A. Well, of course, I had insisted strenuously whenever the question had arisen that Judge Grosscup was utterly wrong in the decree he had entered on the bill filed originally by the People's Gas Light & Coke Company.

Q. Was that on the ground that he had dismissed the bill for want of jurisdiction when he should have retained jurisdiction and dismissed it as he subsequently did on the merits?

A. Certainly.

Mr. TONE: That is objected to as leading and irrelevant and suggestive, placing words in the mouth of the witness.

The WITNESS: (Continuing.) My position had been always that Judge Grosscup was in error in dismissing that suit for want of jurisdiction. I felt confident that we could reverse him on
439 that. Judge Moran agreed with me on that. I felt that there was no question but what the Court had jurisdiction, and when he dismissed it for want of jurisdiction, I felt that we could reverse him in the Supreme Court of the United States.

Q. In a word, Mr. Meagher, the correction of the decree of December, 1903, eliminated from the case before the Supreme Court of the United States one, if not the most important of the grounds upon which you had based the expression of your opinion that Judge Grosscup's decree would be reversed by the Supreme Court of the United States?

Mr. TONE: That is objected to as leading and suggestive and placing the very words before the witness that it is desired that he should answer, and as immaterial and incompetent and what effect a decree had, if any, would involve a question of law on which the Courts are supposed to be expert and not the subject matter of expert testimony by any witness.

The EXAMINER: The objection will be noted.

Q. Please answer?

A. The amendment of the decree in that way certainly eliminated

one of the grounds upon which I was relying to reverse Judge Grosscup and his decree.

Q. Prior to this argument before Judge Grosscup in December, 1903, had you ever been advised or did you have any information to the effect that the decree entered by Judge Grosscup or under Judge Grosscup's decision was a mistake and did not correctly represent his views?

Mr. TONE: That is objected to as immaterial. The witness had been advised from what he understood.

The EXAMINER: Note the objection.

440 A. Never, until Judge Grosscup announced it himself on the bench. I believed that he was wrong about it as a lawyer. I believed we would reverse it.

Mr. TONE: I move to strike out the witness' belief as being wholly irrelevant to the issues.

The EXAMINER: Enter the motion.

The WITNESS: (Continuing.) But never until he announced that it was a mistake and that he did not intend to enter any such decree had I any suspicion that such was his view.

Mr. TONE: The motion may apply to——

Mr. GUTHRIE: To everything, yes. You may make all motions to strike it all out.

Mr. TONE: I think most of it ought to go out.

Q. Mr. Meagher, to your knowledge, so far as you have any information, has the People's Company contributed in any way, directly or indirectly, to the expenses of this suit?

A. No.

Q. Has the company, directly or indirectly, or any one in its behalf entered into any agreement for the indemnity of the complainant in any way?

A. No; there is no such agreement.

Mr. GUTHRIE: Mr. Tone, would you object to having that letter put in evidence as a part of Mr. Meagher's testimony?

Mr. TONE: Subject to the same objection that it is immaterial.

The WITNESS: As to the date of appearances in the Supreme Court of counsel there engaged, I have a letter, dated October 5th, 1905, from the Clerk of the Supreme Court to Messrs. Guthrie, Cravath & Henderson, which I produce.

441 Mr. GUTHRIE: Complainant's counsel offers the letter in evidence.

Mr. TONE: That is objected to as immaterial and incompetent, but otherwise, I have no objection except that if the dates are incorrectly stated it is to be subject to correction.

The EXAMINER: The objection may be noted and the letter will be read in the record as Complainant's Exhibit No. 13.

Complainant's Exhibit 13 is as follows:

"Office of the Clerk.

Supreme Court of the United States.

WASHINGTON, D. C., *October* 5, 1905.

Guthrie, Cravath & Henderson, Esqs., New York City.

GENTLEMEN: Yours of the 4th instant received.

In case of the People's Gas Light & Coke Company appellants *vs.* City of Chicago, No. 132, October Term, 1903, appearances were entered for the appellants by James F. Meagher, William D. Guthrie and William F. Sheehan. Mr. Meagher's appearance was entered at the time of docketing the case, September 25, 1902. Mr. Guthrie's appearance, December 1, 1903 and Mr. Sheehan's January 11, 1904.

Yours truly,

(Signed) JAS. H. McKENNEY,
Clerk, Supreme Court, U. S.,
Per H. C. M."

Cross-examination by Mr. TONE:

Q. How long have you known Mr. William D. Guthrie, counsel for Mr. Mills?

A. I should say fifteen years.

442 Q. During that time, have you had any business relations with him?

A. Yes

Q. You and he have appeared in law suits on the same side.

A. Yes.

Q. You have represented interests jointly.

A. I think so, yes, that is right.

Q. In a number of cases, isn't that right?

A. Well, not a number—two or three.

Q. When did you first have any talk with Mr. Mills in reference to his wanting to commence the suit against the People's Gas Light & Coke Company in the City of Chicago to enjoin the enforcement of the ordinance described in the bill?

A. I think I saw Mr. Mills about it, and I think it was after the date of his letter there, December 16th, 1902.

Q. Before the Board of Directors had acted upon it?

A. I think so.

Q. Did you at that time see Mr. Guthrie?

A. I did, yes, that is, I saw Mr. Guthrie after the receipt of the letter before the meeting of the Board of Directors.

Q. And you at that time tried to persuade Mr. Guthrie not to commence any suit for Mr. Mills.

A. No, I would not say that, Mr. Tone.

Q. You have testified already about having tried to persuade Mr. Guthrie not to begin the suit, when was that?

A. Well, if I did that—I don't remember what I said about it. I did testify that I was opposed to the bringing of the suit, and that

I should have to advise the Board not to comply with the request of Mr. Mills.

Q. And Mr. Guthrie did not agree with you on that?

A. Yes, that is true, but I don't think that I said that I tried to persuade him not to bring the suit.

Q. Didn't you tell him that you had consulted Judge Moran and Mr. Sears?

A. I think I did.

443 Q. And they all shared with you the opinion that it was unwise for Mr. Mills to begin the suit?

A. No, I think I told him that Judge Moran and Judge Sears and myself thought it would be unwise for the company to begin the suit.

Q. But did you discuss with him whether it would be unwise for Mr. Mills, as a stockholder, to begin the suit?

A. Well, I cannot say; I don't remember that.

Q. Did Mr. Guthrie at that time tell you that he had been retained by Mr. Mills to commence the suit as a stockholder?

A. I don't remember that he said that now.

Q. But Mr. Guthrie, anyway, disagreed with you as to its being unwise to commence another suit at this time?

A. He thought that my position as to the effect upon the company and its possible effect upon its business and its affairs might be erroneous.

Q. Where did Mr. Guthrie tell you this second suit should be commenced.

A. He didn't tell me it should be commenced anywhere.

Q. Didn't you ask him if he wanted another suit commenced what court he proposed to bring it in?

A. I did not.

Q. So the question as to what court another suit should be commenced, that Mr. Guthrie was insisting should be commenced, was never discussed between you?

A. Never.

Q. Now, when you took this up with Judge Sears and Judge Moran that it was unwise to begin another suit, did you discuss the question as to what court the other suit should be commenced in?

A. No.

Q. You knew, of course, that any suit commenced by the company which sought to call in question the power of cities and villages under the legislative power to regulate the price of gas, where

444 that was the only question raised, you knew that that had to be commenced in the State court, did you not?

A. No, I did not know that.

Q. Your opinion was that that question would raise a Federal question was it?

A. Yes, where we claimed to have a contract.

Q. No, but the contract question was raised in the People's suit, was it not?

A. Yes, but if we were to file the bill and ask for partial relief, we could raise a contract question, could we not?

Q. Yes, but where the sole question you sought to raise was the power of cities and villages to regulate the price of gas under legisla-

tive authority, you knew that that kind of suit had to be brought in the State court?

A. Certainly, if there was no contract question.

Q. In the event that you were unsuccessful in reversing Judge Grosscup's decision in the Supreme Court of the United States, did you tell Mr. Guthrie what you proposed to do?

A. No.

Q. Did you ever tell him that you expected to comply with the ordinance and furnish gas at 75 cents?

A. I don't think I ever told him that, no.

Q. Did you ever tell him that you expected to contest at all times the right of the city to regulate the price of gas even though you were unsuccessful in the Supreme Court of the United States in the then pending suit?

A. I don't think I ever told him that, no.

Q. Had Mr. Guthrie's idea changed in reference to the advisability of commencing another suit when you consulted him in July, 1903?

A. I don't know.

Q. You went then and employed a lawyer whose views differed from yours as to the policy of bringing suit?

A. No.

Q. At any rate, had you discussed with Mr. Guthrie the advisability of commencing another suit between the time when you have testified and——

A. What time is that?

445 Q. You said you could not fix the date, whenever it was. Did you have more than one discussion with Mr. Guthrie about his saying that the suit should be commenced to test the powers of cities and villages?

A. I think there were possibly—at least—there were two—I will say I think there were two conferences or discussions of that kind and possibly three.

Q. When was the last one?

A. I should say shortly before the 29th of January, 1903

Q. And between that time and the time that you retained Mr. Guthrie as associate counsel for the People's Company in the case in the Supreme Court of the United States, had you discussed with Mr. Guthrie the policy to be pursued in reference to commencing any more suits?

A. No.

Q. Have you any desire in this case as to whether Mr. Mills should win or lose this case?

A. What do you mean by that, Mr. Tone, if I have any desire?

Q. Would you rather see Mills win or would you rather see him lose?

A. Rather see him win.

Q. You have prayed in your answer that the suit may be dismissed?

A. Yes, I know I have, and I did not file any answer in that case until your colleagues made the point that because we did not file an answer it was an evidence of collusion, whereupon, I stood up

in court and asked the Court to give me leave to file an answer. Those were the facts about that Mr. Tone.

Q. So that what you say in your answer that you desire to have the Mills suit dismissed is not strictly true so far as representing your views?

A. Did you ever see an answer that ended in any other or different way? Do you know of any theory or principle of equity pleading that would permit me to put any other conclusion to that answer?

446 Mr. TONE: Is the practice here to instruct the witness to answer or do you merely certify the record up?

Mr. GUTHRIE: I think you can repeat the question, Mr. Tone.

The EXAMINER: As Special Examiner I have only power to note the answers as given.

Mr. TONE: Sometimes, Masters instruct the witness to answer and then if they refuse they certify it up. Will you read the question again?

(Question read by the Reporter as follows:
"So that what you say in your answer that you desire to have the Mills suit dismissed is not strictly true so far as representing your views?")

A. When I asked to have the Mills suit dismissed, I simply followed what I conceived to be the usual rule of pleading. When you asked me what my personal wish is with respect to the suit, I say that I should prefer Mr. Mills should win his suit.

Q. You have assisted Mr. Mills in every way you could to win his suit, have you not?

A. No, sir, I have never lifted a finger to assist Mr. Mills in any way.

Q. Well, as a lawyer for the company, do you mean to say that you have not tried to help out that side which you think ought to win?

A. As lawyer for the company I mean to say that I have done my duty as I have seen it.

Q. Well, don't you conceive it to be your duty to assist Mr. Mills to win, if you think he ought to win?

A. No, I have done nothing to assist Mr. Mills in any way, shape or manner.

Q. Did you go to Mr. Dunne after November 1st, 1905, and ask him to grant an extension of time in which to close proofs?

A. Yes.

447 Q. Went there a number of times?

A. Yes, two or three.

Q. You remember when the application for an increase of the bond in the case was made before Judge Grosscup last summer?

A. Which application do you refer to?

Q. The application to increase the amount of the bond made by Mr. Ashton and Corporation Counsel Lewis?

A. Yes, I remember that.

Q. You remember while that motion was pending that you went to the Mayor and spoke to him about that?

A. I don't think that I did anything of the sort.

Q. Do you remember of telling the Mayor at that time that you thought it was unfair to ask a bond of $15,000,000 to be put up in that case?

A. I don't remember that at all.

Q. Did you see the Mayor between the time when the application for an increase of the injunction bond was made in this case by the city and the time when it was decided by Judge Grosscup?

A. Well, if you could give me the date when the application was made I could answer the question, I think.

Q. Is it not near enough for the purposes of this question to say that the application was made in the last days of September and argued in October?

A. I had two or three interviews with the Mayor about this question of action by the Common Council under the Act passed by the last General Assembly.

Mr. GUTHRIE: The Judge denied it on October 31st. There is no doubt it was in October.

Q. Now, what was the question you asked me?

(Question read by the Reporter.)

Mr. GUTHRIE: I object to this as wholly irrelevant, immaterial and incompetent.

448 A. I may have talked with Judge Dunne during that time, but if I did it was in relation to the proposed legislation to be offered in the Common Council of the City of Chicago respecting the price of gas under the Act adopted by the last General Assembly of the State of Illinois authorizing the city to fix the price of gas.

Q. Did you not at that time tell Mr Dunne that you thought it was unfair that the city should ask that a bond of $15,000,000 be put up to enjoin the—in order to continue in force the injunction, continuing in force the injunction of the ordinance of October 15th, 1900.

Mr. GUTHRIE: The same objection.

A. I may have done so.

Q. Did he not say that that was a matter that the counsel for the city would have to look after?

Mr. GUTHRIE: The same objection.

A. I think maybe he did.

Q. That is substantially what was said, was it not?

A. I think so, as I remember it.

Q. In December, 1903, was the time when the application for an injunction by Mr. Mills was argued before Judge Grosscup?

A. Yes.

Q. The city was represented by Mr. Browning, is that right?

A. I think so, yes.

Q. And Mr. Guthrie appeared for Mr. Mills?
A. Yes.
Q. Did you make any argument at that time.
A. No, I was—the delay in answering was due to the fact that I was turning over in my mind whether I addressed the Court on the question of the mistake that he had said had been made in the decree, but I don't believe I did. I don't recall, at all events, sufficiently clearly to testify to it.
Q. Is it not a fact that you had notice of the application for the injunction?
A. In the Mills suit?
449 Yes, Mr. Guthrie?
A. Well, I suppose I may have, although I don't recall it.
Q. And is it not a fact that you were there on the day that the motion for an injunction was argued?
A. I was there.
Q. That you said nothing on the question at all, but merely appeared when the question of amending the decree in the People's case came up?
A. I think that is right, Mr. Tone.
Q. You had filed no answer to the case of Mills against your company?
A. I filed no answer in that proceeding until the fact of not filing the answer was made the basis of a charge in the United States court by your colleague Mr. Ashton of collusion between the complainant and the People's Gas Company, and then I filed the answer that was filed. I stood up in court right there and asked leave of court to file an answer, because the time had long since expired within which, under the rule, I might have filed it, and the Court granted me leave.
Q. In December, 1903, the Supreme Court of the United States had not handed down an opinion in the other case, the People's Company, had it?
A. No, sir.
Mr. GUTHRIE: It had not been argued yet.
Q. And there was an injunction there which was continued in force until the final disposition of the case in the Supreme Court of the United States?
A. Yes.
Q. Did you not attempt to tell Judge Grosscup that you were opposed to any more injunctions being issued and that one was enough?
A. When and where?
Q. At the argument of the motion for an injunction.
A. No.
Q. You let an injunction issue against your company and its officers and agents without saying a word one way or another
450 to the Court?
A. I had not anything to say. I could not have prevented the issuance of the injunction.
Q. Were you opposed or were you not opposed to the granting of that injunction?

A. I was absolutely neutral.
Q. Indifferent?
A. I was neutral.
Mr. GUTHRIE: At that time?
The WITNESS: At that time.
Q. Did Mr. Brady ever consult you about whether he ought to contribute to Mr. Mills' suit in this case?
A. Never.
Q. Had you any knowledge that he had made any such contribution?
A. Never, until we were here in November, 1905, did I know of such a thing or dream of such a thing until I came down here and was told it.

The foregoing transcript of my testimony has been read and corrected by me and is now subscribed by me in the presence of Hervey W. Booth, Examiner.

JAMES F. MEAGHER.

Mr. GUTHRIE: Now, Mr. Tone, that is the complainant's case.
Mr. TONE: Now, I was going to say here it is barely possible that we will offer no evidence on behalf of the city in this case, and if so, when will it be convenient for you to have the case argued?
Mr. GUTHRIE: First of all we want to print the testimony and subject to my engagements almost any time, but I am going into the trial of a large case early next week and I have the week after several cases in the Circuit Court of Appeals and then I have a large mining case that is waiting to be tried before a jury that may take a week or ten days, but I think I could break away some time
451 within a reasonable time from now after we have printed this testimony and meet your views.
Mr. TONE: Haven't you any evidence to offer, Mr. Meagher?
Mr. MEAGHER: I don't think so. But still I don't want to be foreclosed, but I will tell you within seventy-two hours after I get home. I have another matter waiting me in New York. I won't be home before Saturday. But I will let you know within a very few days.
Mr. GUTHRIE: Let us first of all get this testimony in shape and then see what can be done. What I would like would be to get off there to argue it some Monday before Judge Grosscup so as to be able to travel on the Sunday.
Mr. TONE: Well, I would be very glad to accommodate you.
Mr. GUTHRIE: That would save an extra day. But I cannot stipulate now for any particular date. Now what is your practice, Mr. Booth—there are several changes, I don't think any of them are of importance, in the stenographic notes. I will call your attention to them, Mr. Tone. I don't know exactly what they are now, but Rogers told me there were a few corrections.
The MASTER: Additional to those we discovered when we went over them before?
Mr. GUTHRIE: I don't know.

Mr. TONE: I suggest after you get your evidence all written up and signed by these witnesses that Mr. Meagher and myself can look it over.

Mr. GUTHRIE: Now, what is the rule about printing; can we print it here, or have you a rule that the clerk out there does it?

452 Mr. TONE: I will agree to anything that saves expense.

Mr. GUTHRIE: It is stipulated that the record may be printed by the complainant's counsel in New York and that counsel will agree before printing as to what part, if any, of the exhibits are to be printed.

Mr. TONE: Yes, that is all right. Of course, that is with the understanding that is not contrary to any rule they have up there. Then we can share expense on the thing.

Mr. GUTHRIE: Complainant's counsel are to pay expense of printing in the first instance and same shall be a taxable disbursement and enough copies are to be printed to cover any appeal—the necessary amount on an appeal to be taken by either side.

Mr. TONE: And they may be used by either of the parties in making up transcript so far as the clerk will allow that to be done.

The EXAMINER: Now, in regard to signatures, you will get the signatures of the various witnesses both to this record and to the other.

Mr. GUTHRIE: Yes.

The EXAMINER: And send them out to me.

Mr. TONE: As long as they are not signed before the Master, I suggest you take an acknowledgment before some notary in your office.

Mr. GUTHRIE: Supplemental to the stipulation already entered into, it is understood that the witnesses in New York will acknowledge before a notary public the correctness of their testimony.

The EXAMINER: You simply want the signatures acknowledged, don't you?

453 Mr. TONE: That is all.

Mr. GUTHRIE: It will look funny.

Mr. TONE: That is so.

Mr. GUTHRIE: Leave that out.

Mr. TONE: Here is the only idea I have about it. You might write me a letter saying you know those to be the signatures of the parties; in case any of these witnesses should die, I want it to be certain as long as it is not acknowledged before the Master that we have some evidence before the Master.

Mr. GUTHRIE: I will see to that.

Complainant's counsel thereupon offered in evidence the exhibit heretofore marked for identification, Complainant's Exhibit 10, and counsel for defendant objected to it as being immaterial, but not on the ground that it had not been sufficiently proved.

454 In the United States Circuit Court, Northern District of Illinois, Eastern Division. In Chancery.

No. 26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO ET AL.

I. Hervey W. Booth, heretofore appointed Special Examiner to take and report to the Court the testimony of certain witnesses herein, do hereby certify as follows:

I. That pursuant to the annexed stipulation the foregoing testi- the part of the complainant, before me, at the offices of Messrs. Guthrie, Cravath and Henderson, No. 52 Williams street, in the City of New York and State of New York, on the 17th and 18th days of November, 1905; and that pursuant to the annexed notice the foregoing testimony of George O. Knapp, C. K. G. Billings, Anthony N. Brady and James F. Meagher, was taken on the part of the complainant before me, at the offices of Messrs. Guthrie, Cravath and Henderson aforesaid, on the 2nd day of January, 1906.

II. That I was attended on each of said days, at the taking of said testimony, by W. D. Guthrie, Esq., counsel for the complainant, and by David K. Tone, Esq., counsel for the defendant,
455 the City of Chicago, and James F. Meagher, Esq., counsel for the defendant, the Peoples Gas Light & Coke Company, and by the above named witnesses respectively on the several dates of giving their testimony.

III. That each of said witnesses was by me duly cautioned and sworn, before proceeding with his examination, to tell the truth, the whole truth and nothing but the truth.

IV. That the testimony of said witnesses was given orally, and was taken down by a skilled stenographer, approved by the parties, and was thereafter reduced to type-writing, and was read over by said witnesses respectively, and subscribed by them.

V. That the requirements of the 67th rule in Equity as amended, that said testimony should be read to the witnesses and signed by them in the presence of the Examiner, were, by stipulation of the several counsel above named, waived and dispen*d*ed with.

VI. That the foregoing transcript contains a full and true report of the testimony of the several witnesses aforesaid, and of the proceedings before the Examiner at the taking thereof, and that all objections which were interposed on behalf of any of the parties, at or during the taking of said testimony, have been duly noted on said transcript as thereon shown.

VII. That certain documentary exhibits which are referred to in the foregoing transcript, were offered in evidence as in said transcript stated, and have been duly marked and identified by the undersigned, and are returned herewith.

456 VIII. That after said testimony had been duly signed by the several witnesses aforesaid, it was certified by the undersigned, and with said exhibits was sealed up and delivered by him, in a sealed package, to the clerk of the said Circuit Court of the United States, at his office in the City of Chicago.

In Witness Whereof, I have hereunto set my hand as Special Examiner aforesaid, at the city of Chicago aforesaid, this 29th day of January A. D. 1906.

HERVEY W. BOOTH,
Special Examiner in Equity, Duly Appointed in Said Cause by Order Entered Nov. 1st, 1905.

456½ UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division. In Chancery.

26796.

DARIUS O. MILLS, Complainant,
vs.
THE CITY OF CHICAGO and PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

It is hereby stipulated and agreed between the parties, complainant and defendant herein, by their respective solicitors of record, that the testimony of Darius O. Mills, Richard Rud Rogers and such other witnesses as the complainant may produce, may be taken under the order entered herein on Wednesday, the 1st day of November, 1905 by said Hervey W. Booth, by said order appointed special examiner in this cause, on the seventeenth day of November A. D. 1905, at eleven o'clock A. M. at the offices of Messrs. Guthrie Cravath & Henderson, No. 52 Williams street, in the city of New York, and at such other time or times as said examiner may adjourn or continue the taking of such testimony. That such testimony be reduced to writing and transcribed by a stenographer selected by said Hervey W. Booth. That complainant's solicitors will furnish to defendants' solicitors, a carbon copy of the testimony to be so taken in New York, free of expense to said defendants. It is further agreed that the costs of the special examiner either for his services or expenses, shall in no event be taxed to defendants.

WILLIAM D. GUTHRIE AND
HERRICK, ALLEN, BOYESEN & MARTIN,
Solicitors for Complainant.

457 SEARS, MEAGHER & WHITNEY,
JAMES HAMILTON LEWIS,
Corporation Counsel for City of Chicago,
HENRY M. ASHTON,
Special Counsel for City of Chicago,
Solicitors for Defendants.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery. No. 26796.

DARIUS O. MILLS, Complainant,
vs.
CITY OF CHICAGO and PEOPLES GAS LIGHT & COKE COMPANY, Defendants.

To Messrs. Sears, Meagher & Whitney, Attorneys for the Peoples Gas Light & Coke Company and James Hamilton Lewis and Henry M. Ashton, Attorneys for the City of Chicago:

You are hereby notified that pursuant to the order entered herein on the 1st day of November, 1905, we will, on Tuesday, January 2nd, 1906, at eleven o'clock A. M. at the offices of Messrs. Guthrie Cravath & Henderson 52 William Street, in the City of New York and before Hervey W. Booth, Special Examiner, proceed to take testimony on behalf of the complainant in the above entitled cause, and will proceed therewith from day to day at such time or
458 times as the Special Examiner may adjourn to; when and where you may appear and cross examine if you see fit.

WM. D. GUTHRIE,
HERRICK, ALLEN, BOYESEN & MARTIN,
Attorneys for Complainant.

Received a copy of the above notice this 28 day of December, 1905.

SEARS, MEAGHER & WHITNEY,
DAVID K. TONE AND
H. M. ASHTON,
Counsel for City of Chicago.

(Endorsed:) Filed Jan. 29, 1906, Marshall E. Sampsell, Clerk.

459 COMPLAINANT'S EXHIBIT No. 5.

Regular Annual Meeting of the Stockholders of The Peoples Gas Light and Coke Company, called pursuant to notice, and in accordance with the by-laws of this Company, for this date, February 10th, 1903, at 11 o'clock A. M., at the office of the Company, in Chicago, Illinois, and held pursuant to such notice, and in accordance with the by-laws.

A poll of the stockholders present, in person, or represented by proxies, revealed the fact that a majority of the outstanding shares of the capital stock of this Company were represented and present,

either in person or by valid proxies, and, on motion duly made, seconded and carried, Mr. C. K. G. Billings, Chairman of the Board of Directors, acted as chairman of the meeting, and Mr. L. A. Wiley, the Secretary of the Company, acted as secretary of the meeting.

Thereupon the Secretary presented to the meeting a certificate of the publication of notice calling this meeting, and on motion duly made, seconded and carried, it was unanimously.

Resolved, that said notice be approved, and that the certificate of publication be inserted in the minutes of this meeting.

Said notice and certificate are as follows:

Copy of Notice:

The Peoples Gas Light & Coke Company (of Chicago).

The annual meeting of the Stockholders of The Peoples
460 Gas Light & Coke Company will be held at the office of the Company in Chicago, Michigan Avenue and Adams Street, on Tuesday, February 10th, 1903, at 11 o'clock A. M. The transfer books will be closed in accordance with the by-laws, at the close of business on Tuesday, January 20th, 1903, and will re-open Wednesday, February 11th, 1903.

GEORGE O. KNAPP, *President.*

Copy of Certificate;

1

ALFRED T. WARD, of the City of Chicago, in the County of Cook, State of Illinois, being duly sworn, says that he is Asst. Bus. Mgr. of the Tribune Company, and duly authorized to sign for said Company, publishers of the Chicago Tribune, a Daily Newspaper of general circulation, published in said County, and that the notice of which annexed is a true copy, was printed and published in the regular edition and issue of said Chicago Tribune, for eleven times, to wit: Jan. 15-17-19-21-24-27-29-30, Feb. 2-5-9-'03.

The first publication being on the 15th day of January, 1903, and the last on the 9th day of February, 1903.

Dated at Chicago, Ill., this — day of —— 189--.

(Signed) A. T. WARD,
Ass't Bus. Manager.

Sworn and subscribed to before me this 9th day of February, 1903.

(Signed) ALFRED C. GOLDSMITH,
[NOTARY'S SEAL.] *Notary Public.*

The Secretary then presented to the meeting a list of the Stockholders of this Company, as shown by the transfer books at the close of business on January 20, 1903, and also presented to the
461 meeting a list of the proxies of stockholders not present and which proxies had been presented to the meeting.

The Secretary stated that he had compared the list of stockholders prepared by him, with the proxies so produced at the meeting, and

had verified said list of proxies, and that the proxies so produced were in order, and complied with the requirements of the by-laws of the Company.

On motion duly made, seconded and carried, it was unanimously

Resolved, that said proxies now here presented to this meeting, as shown by the list thereof presented by the Secretary, be accepted and approved.

Thereupon a poll of stockholders present, in person or by proxy, was taken, from which it appeared that the total number of shares represented at this meeting, by such proxies, was 257,867 shares, and that the following stockholders were present in person:

C. K. G. Billings
G. O. Knapp
C. K. Wooster
C. K. Wooster, Trustee
E. J. E. Ward
L. A. Wiley
Isadore B. Rosencranz

It thus appeared that 258,379 shares, out of a total of 329,691 shares of the issued and outstanding capital tock of this Company were present in person or represented at said meeting by valid proxies and entitled to vote on all questions submitted at said meeting. Announcement of the fact was thereupon made by the chairman.

The minutes of proceedings of the annual meeting of the
462 Stockholders of this Company, held on February 10th, 1902, and of the adjournment thereof, held on May 24th, 1902, were thereupon read, and on motion duly made, seconded and carried, were severally, unanimously, and in all things, approved, ratified and confirmed.

The President thereupon presented the following annual report of the operations of the Company, for the year ending December 31st, 1902.

(Copy of Report attached.)

Said Report was discussed by the Stockholders present, and on motion duly made, seconded and carried, it was unanimously,

Resolved, that the Report of the Board of Directors of this Company, presented by the President to the Annual Stockholders' Meeting of this Company, be accepted, that said report be approved, ratified and confirmed, in all things.

On motion duly made, seconded and carried, it was, by the vote of all the shares of the capital stock represented at this meeting, unanimously

Resolved, that all the acts and doings of the Stockholders, and of the Board of Directors, and of the officers of this Company, since the annual meeting of Stockholders, held on the tenth day of February, A. D. 1902, and up to the time of this meeting, be approved, ratified and confirmed, in all things.

On motion, duly made, seconded and carried, it was unanimously

Resolved, that, when this meeting adjourns, it shall adjourn to

meet at the office of the Company in Chicago, on the twenty-second day of May, A. D. 1903, at the hour of eleven o'clock A. M.

Mr. R. R. Rogers, proxy for D. O. Mills, a stockholder of
463 this Company, thereupon offered the following preamble and resolution, and moved the adoption of same:

Whereas, heretofore, said D. O. Mills submitted, to the Board of Directors of this Company, the following letter:

"NEW YORK, *December 14th*, 1902.

To the Board of Directors of the Peoples Gas Light and Coke Company:

DEAR SIRS: I believe you are aware that I am, and for upwards of five years last past have been, the largest stockholder of the Peoples Gas Light and Coke Company, and, of course, as such stockholder, I am vitally interested in the questions which have arisen under the ordinance of the Common Council of the City of Chicago, reducing the price to be charged for illuminating and fuel gas to 75 cents per thousand cubic feet.

I have caused to be submitted to my counsel the proceedings in the suit instituted in the Circuit Court of the United States at Chicago, for the purpose of restraining the enforcement of this ordinance, on the ground that it constituted an impairment of the obligation of the contract contained in our charter, together with a copy of the opinions of Judge Grosscup, and have informed such counsel that the case has been appealed to the Supreme Court of the United States, and will probably not be reached for argument until sometime during the year 1904.

I am advised by counsel that the interests of the Peoples Gas Light and Coke Company may not be adequately protected by the pending litigation for the following reasons:

First: That the bill in the pending suit was dismissed for want of jurisdiction in the Circuit Court of the United States for the Northern District of Illinois, and that in view of such disposi-
464 tion the Supreme Court of the United States may limit the point which it will consider on the present appeal to the naked question of jurisdiction.

Secondly: That the present suit does not involve any question as to the power of the Common Council of the City of Chicago to reduce the charges of our Company.

In view of the vital interest to all stockholders of these questions, I hereby request that you will cause to be instituted at the earliest practicable moment a new suit against the City of Chicago, or otherwise, for the purpose of preventing the enforcement of this ordinance upon the ground that it impairs our charter contract, and that the Common Council had no power to pass it. The facts stated in the amended bill of complaint in the pending suit, I am advised, fully show the necessity for a resort to equity for the protection of our rights.

It seems to me that the importance of this matter to the Company and its stockholders cannot be exaggerated. If the ordinance is valid, the revenue of the Company will be decreased one-quarter of

the present gross income, and very much more than this of the net income.

Yours very truly, D. O. MILLS."

And whereas, in answer to such letter, the Board of Directors took the action evidenced by the letter of the Assistant Secretary of this Company to Mr. Mills, as follows.

"JANUARY, 29, 1903.

D. O. Mills, Esq., 35 Wall Street, New York:

DEAR SIR: I beg to acknowledge receipt of your letter of December 16, 1902, which was submitted to the Board of Directors
465 of the Company, and after conference with the counsel to the Company, the Board felt constrained under all the circumstances to decline to institute any further litigation at the present time, and their action was evidenced by the following resolution, which I am directed to communicate to you, viz.:

'*Resolved*, that this Company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the Board of Directors of this Company, dated the sixteenth day of December, 1902, for the reason that this Board believes that for this Company to institute further legal proceedings to contest the legality of the ordinance adopted by the Common Council of the City of Chicago October 15th, 1900, would excite public prejudice against this Company, which at the present time it is deemed of great importance to avoid.

'*Be it further resolved*, the Secretary be instructed to notify Mr. Mills of the action of this Board, at this meeting, and to send him a copy of this resolution.'

Yours very truly, H. W. OLCOTT,
Assistant Secretary."

Resolved, that the Directors and Officers of the Company be instructed and directed to comply with the request of Mr. D. O. Mills, and to institute legal proceedings against the City of Chicago, or otherwise, for the purpose of restraining the enforcement of the ordinance of October 15th, 1900, on the ground that it impairs our charter contract, and that the common council had no power to pass said ordinance.

The motion to adopt said preamble and resolution, being seconded, was thereupon put by the chair, and lost, votes representing
466 21,995 shares, being the shares of the capital stock represented by the proxy of Mr. D. O. Mills, being cast in favor of the adoption of said resolution, and votes, representing 236,384 shares, being cast against the adoption of said resolution.

Thereupon the chairman declared that the motion of Mr. Rogers, as proxy for said D. O. Mills, was not carried, and that the majority of the stockholders of this company had voted to refuse to comply with the request of said D. O. Mills, as embodied in said preamble and resolution.

There being no other or further business before the meeting, the same, on motion duly made, seconded and carried, adjourned until May 22nd, 1903, at eleven o'clock A. M.

(Signed) L. A. WILEY, *Secretary.*

COMPLAINANT'S EXHIBIT No. 8.

Regular meeting of the Board of Directors of the Peoples Gas Light & Coke Company, held pursuant to call of the President, at the office of the Company, in the City of New York, on Thursday, January 29th, 1903, at 2:15 o'clock P. M.

Present: Messrs. Billings, Brady, Flower and Knapp. Mr. Meagher, counsel to the Company, was also present. Mr. Billings in the Chair and H. W. Olcott acting Secretary of the meeting.

The Minutes of the last meeting of the Board, held on Dec. 16th, 1902, were read, and on motion duly made and seconded, the same were approved.

On motion of Mr. Brady, seconded by Mr. Flower, it was unanimously

Resolved, That a dividend of one and one-half per cent. (1½%) upon the outstanding Capital Stock of this Company, be and
467 the same is hereby declared payable February 25th, 1903, to the stockholders of record at the closing of the Transfer books on Feb. 16th, 1903, and that the Transfer books be closed on Monday, February 16th, 1903, at 3:00 o'clock P. M. and reopened on Thursday, February 26th, 1903, at 10:00 A. M.

The President presented the following communication from Mr. Mills:

"NEW YORK, *December* 16, 1902.

To the Board of Directors of the Peoples Gas Light & Coke Company.

DEAR SIRS:—I believe that you are aware that I am, and for upwards of five years last past have been, the largest stockholder of the Peoples Gas Light & Coke Company, and of course, as such stockholder, I am vitally interested in the questions which have arisen under the ordinance of the Common Council of the City of Chicago reducing the price to be charged for illuminating and fuel gas to 75c. per thousand cubic feet.

I have caused to be submitted to my counsel the proceedings in the suit instituted in the Circuit Court of the United States at Chicago for the purpose of restraining the enforcement of this ordinance, on the ground that it constituted an impairment of the obligation of the contract contained in our charter, together with a copy of the opinions of Judge Grosscup, and have informed such counsel that the case has been appealed to the Supreme Court of the United States and will probably not be reached for argument until some time during the year 1904.

I am advised by counsel that the interests of the Peoples Gas Light & Coke Company may not be adequately protected by the pending litigation for the following reasons:

First: That the bill in the pending suit was dismissed
468 for want of jurisdiction in the Circuit Court of the United States for the Northern District of Illinois, and that in view of such disposition the Supreme Court of the United States may limit

the point which it will consider on the present appeal to the naked question of jurisdiction.

Secondly: That the present suit does not involve any question as to the power of the Common Council of the City of Chicago to reduce the charges of our Company.

In view of the vital interest to all stockholders of these questions, I hereby request that you will cause to be instituted at the earliest practicable moment a new suit against the City of Chicago or otherwise, for the purpose of preventing the enforcement of this ordinance upon the ground that it impairs our charter contract and that the Common Council had no power to pass it. The facts stated in the amended bill of complaint in the pending suit I am advised fully show the necessity for a resort to equity for the protection of our rights.

It seems to me that the importance of this matter to the Company and its stockholders cannot be exaggerated. If the ordinance is valid, the revenue of the Company will be decreased one quarter of the present gross income and very much more than this of the net income.

Yours very truly,
(Signed) D. O. MILLS."

The President stated that on receipt of this letter he had submitted the same to the Counsel to the Company, with directions to communicate opinion as to what action should be taken by this Company upon said request.

Thereupon the Counsel to the Company, who was present, stated that, while appreciating the force of Mr. Mills' position,
469 nevertheless in his opinion it would be impolitic, if not imprudent, to comply with Mr. Mills' request; that if this Company were to commence new litigation, such action might arouse public prejudice against the Company and result in additional adverse action by the Chicago Common Council against this Company and its business. Among other things counsel called attention to the fact that the present Mayor of the City of Chicago, who is a candidate for re-election at the general municipal election to be held in April, had stated in effect, in a printed platform of principles recently issued to the citizens of the City of Chicago on his behalf, that he (said Mayor) had reduced, by twenty-five per cent., the price of gas to the City of Chicago and to gas consumers in said city, and that he was therefore entitled to the favorable consideration of his fellow citizens, and to their suffrages at the coming municipal election. Counsel further stated that it might be seriously injurious to the best interests of the Company to have such a question agitated, which the institution of new litigation would tend to create.

Counsel advised the Board that in his opinion the only safe course to be pursued, so far as practicable, was to defer action until the Supreme Court of the United States shall have finally decided upon the merits of the case brought by this Company now pending upon appeal to that Court, notwithstanding that the result in that case

might not be conclusive upon the questions involved in this ordinance.

The matter was discussed at length, and the following resolution, offered by Mr. Brady, seconded by Mr. Flower, on being put by the Chair, was carried unanimously:

Resolved, That this Company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the
470 Board of Directors of this Company, dated the sixteenth day of December, 1902, for the reason that this Board believes that for this Company to institute further legal proceedings to contest the legality of the ordinance adopted by the Common Council of the City of Chicago, October 15th, 1900, would excite public prejudice against this Company, which at the present time it is deemed of great importance to avoid.

Be it further resolved, the Secretary be instructed to notify Mr. Mills of the action of this Board, at this meeting, and send him a copy of this resolution.

There being no other or further business before the Board, the meeting, on motion, adjourned.

(Signed) H. W. OLCOTT,
Assistant Secretary.

(Endorsed:) Filed Jan. 29, 1906, Marshall E. Sampsell, Clerk.

471 Pleas in the circuit court of the United States for the northern district of Illinois—northern division, in chancery sitting at the United States court-room, in the city of Chicago, in said district and division, before the Honorable Peter S. Grosscup, circuit judge of the United States for the seventh judicial circuit, on Wednesday, the thirtieth day of July, being one of the days of the regular July term of said court, in the year of our Lord one thousand nine hundred and two, and of our Independence the one hundred and twenty-seventh year.

MARSHALL E. SAMPSELL, *Clerk.*

25780. In Chancery.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY, a Corporation,
vs.
CITY OF CHICAGO.

Be it remembered that on this day to wit: the thirty-first day of December in the year of our Lord one thousand nine hundred came The People's Gas Light and Coke Company, by its solicitors, Winston and Meagher and filed in the clerk's office of said court in the above-entitled cause its certain bill of complaint in words and figures following to wit:

Bill of Complaint.

UNITED STATES OF AMERICA, *State of Illinois, ss:*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division, to the February Rule Day, A. D. 1901.

To the honorable judges of said circuit court:

Your orator, The People's Gas Light and Coke Company, a corporation respectfully shows unto the court that it is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and that it is and has been engaged in the manufacture sale and distribution of gas in the city of Chicago for many years last past; that its principal place of business is in the city of Chicago; that it is a citizen of the State of Illinois, and a resident and an inhabitant in the northern division of the northern district of said State. That the city of Chicago is a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois, and is a citizen and inhabitant of the northern division of the northern district of said State, that said city of Chicago derives all its powers from the said State of Illinois, and is the creature of the State of Illinois, and that the only powers which are vested in the said city of Chicago are those granted to it under and by virtue of the acts of the legislature of the State of Illinois.

Your orator further shows unto the court that your orator was organized as a corporation to do business in said State under and
472 by virtue of a special statute of the State of Illinois, approved February 12th, 1855, entitled "An act to incorporate the People's Gas Light and Coke Company," as amended by an act entitled "An act to amend an act entitled 'An act to incorporate the People's Gas Light and Coke Company,' approved February 12th, 1855," which said amendatory act was approved February 7th, 1865.

Your orator further shows that said act of the legislature entitled "An act to incorporate the People's Gas Light and Coke Company" is in the words and figures following, to wit:

"An Act to Incorporate The People's Gas Light and Coke Company.

"SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That Matthew Laflin, L. C. Paine Freer, A. G. Throop, D. A. Gage, Jno. S. Wallace, Geo. W. Snow, H. B. Bay and R. H. Foss, and their associates be and they are hereby created a body politic and corporate, with perpetual succession, by the name and style of 'The People's Gas Light and Coke Company,' and by that name they and their successors shall be capable in law of contracting and being contracted with, suing and being sued, defending and being defended in all courts and places and in all matters and places whatsoever, with full powers to acquire, hold, occupy and enjoy all such real and personal estate as

"may be necessary and proper for the construction, extension and "usefulness of the works of said company, and for the management "and good government of the same; and they may have a common "seal, and the same may alter break and renew at pleasure.

"SEC. 2. The corporation hereby created shall have full power "and authority, forthwith upon their due organization under this "act, to proceed to the erection of the necessary works for the manu- "facture of gas and coke, within said city of Chicago and on and "after the 12th day of February, A. D. 1859, to manufacture and "sell gas, to be made from any or all the substances or a combina- "tion thereof, from which inflammable gas is usually obtained, and "to be used for the purpose of lighting the city of Chicago or the "streets thereof and any buildings, manufactories, public places or "houses therein contained, and to erect all necessary works and ap- "paratus as aforesaid; and on and after the said 12th day of Febru- "ary, 1859, or sooner by and with the consent of the Chicago Gas "Light and Coke Company, to lay pipes for the purpose of conduct- "ing the gas in any of the streets or avenues of said city, with the "consent of the city council: Provided, that no permanent injury or "damage shall be done to any street, lane or highway in said city. "The real estate which this corporation is entitled to hold shall not "exceed in value one hundred thousand dollars.

"SEC. 3. The capital stock of said company shall not exceed five "hundred thousand dollars, to be subscribed for and paid in such "proportions as shall be prescribed by the by-laws and rules for "regulating the concerns of said company as they shall think proper "and necessary respecting the management and disposition of the "stock, property and estate of said company, the duties of the
473 "officers and agents to be employed, the number and election "of directors and all such matters as appertain to the con- "cerns of said company.

"SEC. 4. It is an express provision of the foregoing act of incor- "poration that the said company shall furnish and supply to the "city of Chicago, for all its public uses, at the election of the proper "authorities of said city, a sufficient supply of gas, at a rate not ex- "ceeding two dollars per thousand feet; and the inhabitants of said "city at a rate not exceeding two dollars and fifty cents per thou- "sand feet.

"Approved Feb. 12, 1855."

Your orator further shows that the act entitled "An act to amend an act entitled 'An act to incorporate the People's Gas Light and Coke Company,' approved February 12th, 1855," is in the words and figures following to wit:

"An act to amend an act entitled 'An act to incorporate the People's "Gas Light and Coke Company,' approved February 12, 1855.

"SEC. 1. *Be it enacted by the people of the State of Illinois, repre- "sented in the General Assembly*, That the second section of said act "be and the same is hereby so amended as to read as follows viz: "The corporation hereby created shall have full power and authority

"forthwith to proceed to the erection and maintenance of the neces-
"sary works for the manufacture of gas and coke within said city
"of Chicago, and to manufacture, supply and sell gas, to be made
"from any and all substances, or a combination thereof, from which
"inflammable gas is usually obtained, and to be used for the purpose
"of lighting the city of Chicago, any streets, buildings, manufac-
"tories, public places or houses, therein contained, and to erect and
"use all necessary works and apparatus for such purposes aforesaid,
"and with the consent of the common council of said city, to lay
"down and use all necessary pipes for the conducting of gas in and
"along any of the streets, alleys, avenues or public squares of said
"city: *Provided*, That no permanent injury or damage shall be done
"to any such street, alley, avenue or public square by the laying
"down of any such pipes.

"SEC. 2. That section three of the said act be and the same is
"hereby so amended as to read as follows, viz: The capital stock of
"said company shall be five hundred thousand dollars, and may be
"increased from time to time, at the pleasure of said corporation, it
"may be divided into such shares, subscribed for, paid and trans-
"ferred in such proportions and manner as shall be prescribed by the
"by-laws and regulations of said company.

"SEC. 3. All the corporate powers of said corporation shall be
"vested in and exercised by a board of directors, and such officers and
"agents as said board shall appoint. The board of directors shall
"consist of not less than three nor more than five stockholders, who
"shall be chosen by the stockholders at such time and in such man-
"ner as the said corporation shall by its by-laws prescribe, and shall
"hold their office until their successors are elected and qualified, and
"may fill any vacancies which may happen in the board of
474 "directors by death, resignation or otherwise; they may adopt
"such by-laws, rules and regulations for the government of
"said corporation and the management of its affairs and business as
"they may think proper, not inconsistent with the laws of this State,
"and the fourth section of said act is hereby repealed; but ten years
"after the passage of this act the common council of the city of Chi-
"cago may, by resolution or ordinance, regulate the prices charged
"by said company for gas; but said common council of the city of
"Chicago, shall, in no case, be authorized to compel the said company
"to furnish gas at a less rate than three dollars per thousand feet.

"SEC. 4. The said corporation is hereby authorized to borrow
"money and to mortgage or lease any of its property or franchises.

"SEC. 5. This act shall be deemed a public act, and noticed as
"such by all courts without pleading, and take effect from and after
"its passage.

"Approved February 7, 1865."

Your orator further shows that after the passage of said act approved February 12th, 1855, as amended by the act approved February 7th, 1865, as hereinbefore set forth, your orator, The People's Gas Light and Coke Company, did act upon the privileges and powers therein granted and did accept the same, and did thereupon proceed to construct gas works in the city of Chicago, and did with

the consent of said city proceed to lay mains for the delivery of gas to consumers thereof in the city of Chicago, and did invest many million dollars in the enterprise of constructing gas works and of delivering gas to consumers thereof in the city of Chicago, and that thereby the said charter granted to the People's Gas Light and Coke Company, approved February 12th, 1855, as amended by the amendatory act approved February 7th, 1865, did become and was and now is a contract by and between the said People's Gas Light and Coke Company and the people of the State of Illinois. And your orator further shows that from the date of said act approved February 12th, 1855, as hereinbefore set forth as amended by the act approved February 7th, 1865, as hereinbefore set forth, the said People's Gas Light and Coke Company did continuously thence hitherto remain in and engage in the business of manufacturing, selling and distributing gas in and through the streets of the said city of Chicago, and that the said People's Gas Light and Coke Company is now engaged in the business of manufacturing, selling and distributing gas in the city of Chicago, and that said contract by and between the said People's Gas Light and Coke Company and the said people of the State of Illinois by means thereof still is a contract in full force and effect, and has not been repealed, annulled or canceled.

Your orator further shows unto the court that, relying upon the said contract, your orator has invested its capital and funds in the development of its business in the city of Chicago, and on the date of the filing of this bill of complaint your orator owns real
475 estate in the city of Chicago to the value of several millions of dollars; that it owns personal property in the said city of Chicago to the value of several millions of dollars; that it has many factories, retorts, plants and other apparatus for the manufacture, sale and distribution of gas in the city of Chicago, and that it has upwards of seventeen hundred miles of pipes and mains laid in the streets of said city, and that it is now engaged in the operation of the plants and apparatus aforesaid, and in the distribution of gas through the pipes aforesaid to the city of Chicago and to the citizens thereof.

Your orator further shows unto the court that under and by virtue of the charter granted to your orator by the people of the State of Illinois, as hereinbefore set forth, which said charter is still in full force and effect, your orator was given, by the legislature of the State of Illinois, full authority touching the management of its affairs and business and full authority to fix such rates as in *the* judgment *of* your orator might deem reasonable, best or proper to charge for the gas sold and delivered by your orator through the pipes laid in the streets of the city of Chicago to the consumers and customers of your orator situated and residing therein; and that by said charter it was provided that the common council of the city of Chicago should in no case be authorized to compel your orator to furnish gas at a less rate than three dollars per thousand cubic feet.

Your orator further shows unto the court that, pursuant to the privileges and powers granted unto your orator by the terms of its charter, as hereinbefore set forth, your orator has, from time

to time fixed the rates charged by your orator for gas sold by it in the city of Chicago at such figures as in the judgment of your orator your orator deemed it proper to charge, and has from time to time decreased said rates until the price thereof now charged by your orator for illuminating gas manufactured and sold by it in the city of Chicago to residents thereof and to the city of Chicago is the net rate of one dollar per thousand cubic feet; and your orator further shows unto the court that at the time when your orator was first incorporated and began to do business in the city of Chicago, your orator charged for the gas manufactured and sold by it to the residents of the city of Chicago and to the said city of Chicago a rate much higher than the net rate of one dollar per thousand cubic feet, and that the reductions from time to time made by your orator from the higher rate originally charged by your orator to the net rate of one dollar per thousand cubic feet have been made by your orator of your orator's own free will and voluntary act and have not been by reason of any ordinance of the city of Chicago compelling or attempting to compel your orator to make any reduction or reductions in the price charged by your orator for the gas sold and delivered by it in the city of Chicago to residents thereof and to the city of Chicago; and your orator here shows that the city of Chicago itself is a customer of your orator and has been for many years last past, and that its bills as a consumer of the gas manufactured and sold by your orator during the year 1899 and consumed
476 by said city of Chicago amounted to upwards of five hundred and fifty thousand dollars, and that the bills for gas manufactured, sold and delivered by your orator to the city of Chicago, and consumed by the said city of Chicago, for the year 1900, amounted to upwards of four hundred and ninety thousand dollars that the city of Chicago is a customer of your orator in the same sense and in the same way and under the same legal conditions as each and every customer of your orator in the city of Chicago; and your orator further shows unto the court that it has never delivered gas to the city of Chicago except upon contract first made by and between your orator and the city of Chicago, and that it has never delivered gas to any customer or patron in the city of Chicago except upon contract first made by and between said customer and your orator, and in each and every of said cases your orator has determined what the price should be for the gas to be furnished by your orator to such customer and to the city of Chicago in accordance with the privileges and powers granted to your orator in its charter as aforesaid.

Your orator further shows unto the court that notwithstanding the privileges and powers conferred upon your orator by its charter as aforesaid, and notwithstanding the inhibition contained in said charter, providing that the common council of the city of Chicago should in no case be authorized to compel your orator to furnish gas at a net rate less than three dollars per thousand cubic feet, and notwithstanding the contract thereby existing by and between your orator and the people of the State of Illinois, the said common council of the city of Chicago, as representing said city, did recently arbitrarily, unlawfully and unwarrantably, claiming that it has the

power to regulate the price of gas sold and distributed by your orator in the city of Chicago to the city of Chicago and to residents thereof, and without investigation or judicial proceedings of any kind, and without giving or permitting a hearing of any sort to your orator, on or about the fifteenth day of October, 1900, did pass a certain ordinance, which said ordinance is in the words and figures following to wit:

"Be it ordained by the city council of the city of Chicago:

SECTION 1. That no corporation, company or companies, firm or persons manufacturing, selling, supplying or distributing gas in the city of Chicago for illuminating or for fuel purposes shall charge, exact, demand or collect from any consumer thereof more than the sum of seventy-five (75) cents per one thousand (1000) cubic feet of gas consumed or used. Said sum of seventy-five (75) cents per one thousand (1000) cubic feet of gas shall be the net price charged, exacted, demanded or collected from each consumer. Manufactured gas so furnished shall afford a light of not less than twenty (20) candle-power, to be measured and ascertained at the place of consumption in said city by the most modern appliances known to science for measuring the candle-power of illuminating gas.

Provided, however, that any corporation, company or com-
477 panies, firm or person distributing or selling gas for fuel or illuminating purposes in the city of Chicago may, in addition to said seventy-five (75) cents per one thousand cubic feet of gas furnished to such consumer, add a penalty of not exceeding ten (10) cents for each one thousand (1000) cubic feet of gas so supplied to such consumer for delinquency or non-payment of the bill, statement or charge of said corporation company or companies, firm or person after ten days from the date at which said bill, statement or charge is made and furnished to such consumer.

SECTION 2. That any company, corporation, person or persons who shall remove any meter or meters from the house, store, factory or premises of any consumer of gas in the city of Chicago, against the will and consent of any such consumer of gas who is willing to pay for gas furnished him, it or them by any such company, corporation, person or persons, and tenders the amount due at the price established and fixed in section 1 of this ordinance, shall be subject to a penalty of not less that twenty-five (25) nor more than two hundred (200) dollars for each and every offense, provided, however, that any company corporation, person or persons furnishing gas to consumers in the city of Chicago shall have the right to remove any meter or meters for the purpose or repairing the same, on condition that such meter or meters so removed shall be replaced or a new one substituted in its place within twenty-four (24) hours of the time of the removal of any such meter or meters.

SECTION 3. That any company, corporation, person or persons who shall in violation of the provisions of the preceding sections, charge or require the city of Chicago, or any citizen thereof, or any consumer of gas therein, to pay for gas furnished to it or them, or either of them, a sum in excess of seventy-five (75) cents per thousand cubic feet, or who shall furnish to the said city of Chicago, or

any citizen thereof, manufactured gas less than twenty (20) candle-power shall be subject to a penalty of not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00) for each and every offense.

SECTION 4. This ordinance shall be in full force and effect from and after the 2nd day of January, A. D. 1901, provided, that said ordinance shall not go into effect until it has been duly published, as provided by law."

Your orator further shows that the said ordinance was not thereafter vetoed, repealed, modified or amended, and that the same remains in full force and effect, as the enactment of said common council of the city of Chicago, and of said city of Chicago.

Your orator further shows unto the court that the history of the passage, of said ordinance by the common council of the city of Chicago is as follows: Your orator shows that at a meeting of the common council of the city of Chicago, held on the twenty-fourth day of September, 1900, there was presented to said common council for its consideration, by Alderman Patterson, he being then and there a member of said common council, an ordinance regulating and fixing the maximum price of gas, which said ordinance was there-
478 upon referred to the committee on judiciary, that being one of the regular organized committees of said common council; that on the same date there was presented by Alderman Eisfeldt, he being then and there an alderman of the city of Chicago and a member of the common council, an ordinance concerning the distribution and price of gas which was also referred to said committee on judiciary; that afterwards, to wit: on the first day of October, 1900, at the next meeting of the said committee on judiciary, the said committee on judiciary did report unto the said common council of the city of Chicago upon the said two ordinances presented as aforesaid by Alderman Patterson and Eisfeldt respectively, and recommended in lieu thereof the ordinance hereinbefore set forth as having been passed by the said common council of the city of Chicago, which said report was thereupon deferred and published.

Your orator further shows unto the court that the membership of said committee on judiciary of the common council of the city of Chicago is composed largely of attorneys and counsellors at law, engaged in the practice of the law in the city of Chicago, State of Illinois, and that the said committee on judiciary did before the presentation of the ordinance aforesaid make a careful investigation of the rights and powers of the said city of Chicago, and that the said committee on judiciary did report the same to the common council of the city of Chicago, believing that there was vested in the said city of Chicago full and ample authority to regulate and fix the price of gas to be charged by your orator for the gas manufactured, sold and distributed by it to the city of Chicago and to the residents thereof; and your orator further shows unto the court that the common council of the city of Chicago passed said ordinance believing and claiming that it, the said common council of the city of Chicago had full and ample power and authority to regulate the price of gas

sold and distributed by your orator to the city of Chicago and to the residents thereof.

Your orator further shows unto the court that the said common council of the city of Chicago duly passed the said ordinance aforesaid, having first had the advice of its committee on judiciary which recommended the passage of the ordinance as the same was passed.

Your orator further shows unto the court that on the twenty-sixth day of May, 1899, the corporation counsel of the city of Chicago reported to said common council of the city of Chicago that under a decision recently announced by the supreme court of the State of Illinois he believed it to be the law that if the case were presented to the courts of the State of Illinois the courts of the State would hold that there was vested in municipal corporations under the general police power granted to them by the statutes of the State of Illinois the right to regulate the demands and rates charged by quasi-public corporations.

Your orator further shows unto the court that the said common council of the city of Chicago, in the passage of the ordinance hereinbefore set forth as having been passed by said common council on October 15th, 1900, relied not only upon the recommenda-
479 tion and advice of its said committee on judiciary, composed of attorneys and counsellors as aforesaid, but also relied upon the opinion of the corporation counsel of the city of Chicago rendered to it as aforesaid on the twenty-sixth day of May, 1899, at a regular meeting thereof.

Your orator further shows that under and by virtue of the general police powers claimed by the city of Chicago to have been granted to it by the legislature of the State of Illinois, the city of Chicago has assumed the right to regulate and fix the prices at which gas shall hereafter be furnished by your orator to the citizens of the city of Chicago and to the city itself.

Your orator further shows unto the court that the said city of Chicago so claims the said right as aforesaid regardless of the privileges and powers conferred upon your orator by its charter from the State of Illinois and of the inhibition contained therein.

Your orator further shows unto the court that the said ordinance of the city of Chicago was passed in good faith by the unanimous vote of the members of the said common council of the city of Chicago being in attendance upon said meeting on October 15th, 1900, which your orator shows was a regular meeting of said common council; and that the said city of Chicago announces and has announced that on and after the second day of January, 1901, it will enforce the said ordinance against your orator in the event of any violation of the terms thereof by your orator; and your orator further shows unto the court that your orator has been advised by sundry citizens of the city of Chicago that in the event of the failure of your orator to comply with the terms of the ordinance so passed by the said city of Chicago as aforesaid, they would immediately take steps by means of prosecutions in the courts of the State of Illinois to enforce the penalties provided by said ordinance upon

your orator in the event of a violation by your orator of any of the terms of said ordinance as aforesaid.

Your orator further shows unto the court that it has now upwards of three hundred thousand (300,000) customers in the city of Chicago, in addition to the city of Chicago itself, to which your orator is daily selling and distributing gas, and that during the year 1900, your orator sold and delivered to such customers at the rates specified an enormous amount of gas, aggregating many million cubic feet; and that on the date of the passage of said ordinance your orator was engaged in selling illuminating gas to said customers, including the city of Chicago, at the net rate of *old* dollar per thousand cubic feet, which said net rate of one dollar per thousand cubic feet your orator had fixed as the price of its illuminating gas sold and delivered in the city of Chicago, and which said rate so fixed by your orator had been charged by your orator in the city of Chicago for some two or three years last past.

Your orator further shows unto the court that it fixed the said rate of one dollar net per thousand cubic feet pursuant to the privileges and powers conferred upon your orator by its charter as aforesaid,
and because in the judgment of your orator it was a just fair
480 and proper rate for your orator to charge for its illuminating gas as aforesaid.

Your orator further shows unto the court that if, after the second day of January, 1901, your orator should fail to comply with the terms of said ordinance, and should decline to furnish gas at the rate fixed therefor in said ordinance, but on the contrary should continue to demand of its customers the rate which your orator has fixed as being the just, fair and proper rate for your orator to charge to said customers,—that is to say, should continue to charge said customers one dollar net per thousand cubic feet for gas sold and distributed to them—then under and by virtue of the terms of said ordinance any customer of your orator in the city of Chicago could begin a prosecution against your orator for the violation of the terms and conditions of said ordinance; and your orator charges the fact to be that in the event of the failure of your orator to comply with the terms and conditions of said ordinance many thousands of such suits will be started by the customers of your orator in the city of Chicago, in addition to such suits as the city of Chicago might see fit to start in attempting to enforce the provisions of said ordinance; and your orator shows unto the court that thereby and by means thereof your orator would be subjected to a multiplicity of suits, that it would be subjected to enormous expense in defending the same, that by reason thereof your orator would be unable to attend to its ordinary and legitimate business pursuant to the privileges and powers conferred upon it by its charter from the people of the State of Illinois, and that the litigation arising therefrom would be endless and that the suits arising thereby would be numberless.

Your orator further states unto the court and charges the fact to be that in the event of the failure of your orator to comply with the terms and conditions of said ordinance, the said city of Chicago will, on and after the second day of January, 1901, attempt to en-

force the provisions of said ordinance and to compel your orator to comply therewith. And your orator charges the fact to be that in pursuance of such effort, on the part of said city of Chicago, to compel your orator to comply with the terms and conditions of said ordinance, the said city of Chicago will begin, or cause to be begun, an enormous number of such suits, and will thereby harrass and disturb your orator, in the pursuance of its business aforesaid, and will make it impossible for your orator to conduct its business, as aforesaid, in the said city of Chicago, because thereof.

Your orator further shows unto your honors that the powers and privileges conferred upon your orator, by its said charter, to fix the rates of the gas sold and distributed by your orator, is a property right, and as such is protected by the Constitution of the United States and the laws thereof.

Your orator further shows unto the court that the passage of said ordinance and the enforcement thereof, by the common council of the city of Chicago, is and will be an attempt upon the part of the said city of Chicago to reduce the price of the gas manufactured sold and distributed by your orator in and through the city
481 of Chicago, in violation of the contract between your orator and the people of the State of Illinois, as hereinbefore set forth, and is a violation of the rights of your orator, as guaranteed by the fifth amendment to the Constitution of the United States, wherin and whereby it is provided that no person shall be deprived of life, liberty or property, without due process of law; that it is a further violation of the rights of your orator as guaranteed to it by the fourteenth amendment to the Constitution of the United States States of America, wherein and whereby it is provided that no State shall deprive any person of life, liberty or property without due process of law; that it is a further violation of the rights of your orator, as guaranteed to your orator by the first paragraph of section 10 of article 1 of the Constitution of the United States of America, wherein and whereby it is provided that no State shall pass any law impairing the obligation of contracts; that it is a further violation of the rights of your orator, as guaranteed to it by the Constitution of the United States of America, in that it denies to your orator the equal protection of the law, all of which constitutional guaranties this complainant invokes and relies upon.

Your orator further shows unto the court that the price fixed by the common council of the city of Chicago, in the ordinance hereinbefore set forth, is an unreasonable price; that your orator cannot sell and distribute gas at said price to the residents of the city of Chicago and make therefrom a reasonable profit upon the amounts invested by your orator in its business of manufacturing, selling and distributing gas; that the enforcement of said rate would bring ruin and de-truction to your orator financially and would force your orator into insolvency.

Your orator further shows that the enforcement thereof would cause your orator the loss of many millions of dollars; that the exact amount which your orator would lose from its enforcement your

orator is unable to state, but that it is largely in excess of two thousand dollars.

Your orator further shows that the enforcement of said ordinance would amount to a confiscation of your orator's property in violation of the Constitution and laws of the United States, and of all amendments thereto.

Your orator further respectfully submits unto the court that in the opinion of your orator no power was, by the legislature of the State of Illinois, or now is, conferred upon the city of Chicago, to regulate the price of gas sold and distributed by your orator in the city of Chicago, except as it is provided in said charter, as hereinabove set forth, and your orator therefore charges the fact to be that the city of Chicago has not the power to compel your orator to charge less for the gas sold and distributed by it than three dollars per thousand cubic feet, and that the said ordinance is, in all respects, null and void. Nevertheless, your orator shows unto the court, as hereinbefore set forth, that the city of Chicago intends to and will enforce the provisions of said ordinance, in the event the enforcement thereof is not prohibited by the order of this honorable court.

482 Forasmuch, therefore, as your orator is without remedy save in a court of equity, where such matters are properly cognizable your orator prays that the City of Chicago and the citizens thereof, who are hereby made parties defendant to this bill, may be required to make full and direct answer to the same, to the next return day of this court, but not under oath, answer under oath being expressly waived, that on the filing of this bill of complaint the usual writ of injunction may issue forthwith against the City of Chicago, restraining and enjoining its mayor, its chief of police, city attorney, corporation counsel, agents, servants and employees, and all and singular its other executive officers, and each every and all of the citizens of Chicago, from in any way enforcing or attempting to enforce said ordinance entitled "An ordinance regulating and fixing the price of gas in the city of Chicago," or any of the provisions thereof, against your orator, or from in any way interfering with your orator or with said property or business, by reason of anything in said ordinance contained, until the further order of the court herein, and that upon the final hearing hereof the said ordinance so passed by the common council of the city of Chicago, on the fifteenth day of October, 1900, may be adjudged and declared to be invalid, illegal, null and void and of no further force and effect, and that the said City of Chicago, its mayor, chief of police, city attorney, corporation counsel, agents, servants, and employees, and all and singular its other executive officers and each, every and all of the citizens of Chicago, may be permanently enjoined and restrained from enforcing or attempting to enforce, the same or any of the provisions thereof, against your orator, or from in any way interferring with your orator, its property or business, by reason of anything in said ordinance contained, and that in serving the said City of Chicago and the mayor thereof it may be decreed by this honorable court that the service thereon of said writ of injunction and of such

summons as may be sued out herein shall be held by this honorable court to have been service not only upon said City of Chicago, and the mayor thereof, but also upon each, every and all of the citizens of said city, and that your orator may have such other further relief in the premises as equity may require and to your honors may seem fit; and may it please your honors to grant the usual summons in chancery, directed to the defendant, The City of Chicago, and to the citizens thereof, directing it and them, and each, every and all of them, to be and appear before this honorable court, on the next return day thereof, then and there to answer this bill of complaint.

And this your orator will ever pray.

THE PEOPLE'S GAS LIGHT & COKE COMPANY,
By C. K. WOOSTER, *Its Vice-President.*

WINSTON & MEAGHER,
Of Counsel.

483 STATE OF ILLINOIS, *County of Cook,* ss:

C. K. Wooster, being duly sworn, on oath deposes and says that he is one of the vice-presidents of The People's Gas Light and Coke Company; that he has read the foregoing bill of complaint and knows the contents thereof, and the matters and things therein set forth. And affiant further says that said bill of complaint, and the matters and things therein set forth, and the charges and allegations therein made, and each and every of them, are true of affiant's own knowledge.

C. K. WOOSTER.

Subscribed and sworn to before me this 31st day of December, A. D. 1900.

[SEAL.] JAMES T. MAHER,
Notary Public.

(Endorsed:) Filed Dec. 31, 1900. S. W. Burnham, clerk.

And on to wit: the 31st day of December, 1900, there issued out of the clerk's office of said court in said entitled cause a certain chancery subpœna, which subpœna together with the memorandum thereto attached and the marshal's return thereon endorsed is in the words and figures following to wit:

Form No. 186.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

The United States of America to City of Chicago, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America, for the

northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of February, next, to answer the bill of complaint of People's Gas Light & Coke Company, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this 31st day of December in the year of our Lord one thousand nine hundred, and of our Independence the 125th year.

[SEAL.] S. W. BURNHAM, *Clerk.*

Memorandum.

The above-named defendant is notified that unless it shall enter its appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is return-
484 able, the complainant's bill will be taken against it as confessed, and a decree entered accordingly.

S. W. BURNHAM, *Clerk.*

(Endorsed:) Marshal's No. —. General No. —. Circuit court United States northern district of Illinois northern division. —— —— *vs.* —— ——. Chancery subpœna. Returnable to rule day, first Monday in —— A. D. 190-. —— —— clerk. —— —— complainant's solicitor.

Circuit Court of the United States of America, Northern District of Illinois, *ss.*

In Chancery.

—— ——

vs.

—— ——.

To —— ——:

Take notice that the complainant will move this honorable court, on the — day of —— A. D. 190- or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within and above named defendant in accordance with the prayer of the bill therein.

Yours, etc.,

—— ——,

Compl't's Solicitor.

Dated this — day of —— A. D. 190-.

Marshal's Return.

I have served this writ within my district, upon the City of Chicago, a municipality by delivering a true copy thereof to William

Loeffler, city clerk of the said city, on the 31st day of December, A. D. 1900.

I was unable to find the mayor of the said city within my district.

JOHN C. AMES,
U. S. Marshal.
WM. E. CASS, *Deputy.*

(Endorsed:) Filed Jan. 3, 1901. S. W. Burnham, clerk.

And on to wit: the second day of January, 1901, being one of the days of the regular December term of said court, 1900, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to wit:

485 *Order of January* 2, 1901.

25780.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs
THE CITY OF CHICAGO.

This day this cause coming on to be heard upon the verified bill of complaint heretofore filed herein by the People's Gas Light and Coke Company, and upon the motion of said complainant for a restraining order, as prayed for in said bill of complaint, due notice of said motion having been served upon the City of Chicago, and said City of Chicago being now in court by its corporation counsel, upon the stipulation and undertaking of the corporation counsel of the city of Chicago here made in open court that the City of Chicago, its mayor, its city attorney, its corporation counsel, and each of them and each, every and all of the officers, agents, servants and employees of the city of Chicago, will not do, nor permit to be done any of the matters and things which by the prayer of said bill of complaint the defendant is sought to be restrained therefrom and against, until the final hearing and determination of said motion for an injunction, the motion for a temporary restraining order against said City of Chicago is continued upon said stipulation and undertaking of the corporation counsel until the final determination of said motion for an injunction.

And, on motion of the complainant.

It is ordered by the court that, if at any time hereafter any resident or residents, citizen or citizens of the city of Chicago shall enforce, or attempt to enforce, the ordinance passed by the city council of the city of Chicago on October 15th, 1900, entitled "An ordinance regulating and fixing the price of gas in the city of Chicago," or begin any prosecution thereunder, or take any steps or other proceedings thereunder, the complainant shall have leave to forthwith make such resident- or citizens parties defendant to said bill, and that said parties, and each of them, shall thereupon be forthwith enjoined and restrained, as prayed for in and by the bill of complaint filed in said cause.

And on to wit: the third day of January, 1902, came the City of Chicago by Granville W. Browning and Charles M. Walker, corporation counsel and filed in the clerk's office of said court in said entitled cause its certain demurrer in words and figures following to wit:

486 *Demurrer of City of Chicago.*

UNITED STATES OF AMERICA, *State of Illinois, ss:*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Number 25780.

PEOPLE'S GAS LIGHT & COKE COMPANY
vs.
CITY OF CHICAGO.

The Demurrer of The City of Chicago, Def't, to the Bill of Complaint of The People's Gas Light & Coke Company, Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demurs to said bill and for cause of demurrer shows that the complainant has not in and by its said bill, made or stated such a case as entitles it in a court of equity to any discovery or relief from or against this defendant, touching the matters contained in the said bill, or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant demurs to the said bill and to all the matters and things therein contained, and prays the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill; and it prays to be dismissed with its reasonable costs in this behalf sustained.

THE CITY OF CHICAGO,
By GRANVILLE W. BROWNING,
Solicitor for Defendant.

CHARLES M. WALKER,
Corporation Counsel, of Counsel.

I certify that in my opinion the foregoing demurrer of The City of Chicago, defendant, to the bill of complaint of The People's Gas Light & Coke Company, complainant, is well founded in law and proper to be filed in the above cause.

GRANVILLE W. BROWNING,
Solicitor for Defendant.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Granville W. Browning on oath states that he is the solicitor of the city of Chicago, and that he has heard read the foregoing demurrer to the bill of complaint of the People's Gas Light & Coke Company, in this suit, and that the same is not interposed for the purpose of delaying said suit, or any proceeding therein.

GRANVILLE W. BROWNING.

487 Subscribed and sworn to before me, this 3 day of January, A. D 1902.

[SEAL.] S. W. BURNHAM, *Clerk.*

(Endorsed:) Filed Jan'y 3, 1902. S. W. Burnham, clerk.

And on to wit: the third day of January, 1902, being one of the days of the regular December term of said court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to wit:

Order of January 3, 1902, Giving Leave to File Amendment to the Bill.

25780.

PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO.

Now come the parties by their solicitors.

Upon motion, leave is hereby granted the complainant to file an amendment to the bill of complaint instanter, the demurrer heretofore filed by defendant to the bill to stand to the bill as amended.

Now comes on to be heard the demurrer to said amended bill, the court after hearing the arguments of counsel in full, takes the matter under advisement.

And on to wit: the third day of January, 1902, came the complainant in said entitled cause by its solicitor and by leave of court first had and obtained filed in the clerk's office of said court in said cause a certain amendment to the bill of complaint in words and figures following to wit:

Amendment to Bill.

In the Circuit Court of the United States of America for the Northern District of the State of Illinois, Northern Division

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO.

Now come the complainant herein, leave of court being first had and obtained, and amends the original bill of complaint heretofore filed herein by the said complainant, by inserting after the word "thereof," in the third line from the bottom of the thirteenth page of said bill of complaint, and before the word "your," in the second line from the bottom of said thirteenth page of said bill, the following, to wit:

"Your orator further shows unto your honors that, in the business "of manufacturing, selling and distributing gas in the city of Chi- "cago, your orator sells and delivers, as hereabove set forth, gas to "over three hundred thousand (300,000) customers. That many of "said three hundred thousand customers are people of small
488 "means, and are financially irresponsible. That your orator "renders to each of its customers monthly statements for the "gas consumed by each of such customers during the preceding "month, and collects therefor within a short time thereafter; that "unless said bills are promptly paid your orator, as is its right and "privilege, discontinues the supply of gas to such consumers and "that this is the only method by which your orator is enabled to "avoid great loss, by reason of the failure or inability of your ora- "tor's customers and consumers to pay the bills for the gas con- "sumed by them, as aforesaid.

"Your orator further shows unto your honors that if the city of "Chicago should be permitted to begin prosecutions against your "orator for the failure of your orator to comply with the terms of "the ordinance aforesaid, that thereupon a large number of the cus- "tomers and consumers of your orator would decline to pay your "orator the price fixed by it, as aforesaid, and would refuse to pay "any sum or sums whatsoever to your orator, over and above the "sum fixed by the city of Chicago in the ordinance aforesaid.

"And your orator shows unto your honors that if your orator "should attempt to renew the meters in the houses of such cus- "tomers, or should attempt to discontinue the supply of gas to such "customers, your orator would be immediately subjected to addi- "tional prosecutions and arrests, on the part of the city of Chicago.

"Your orator further shows that if, on the other hand, your ora- "tor should permit the bills of such customers to run until the final "determination of such suit, or suits as the city of Chicago might "bring against it, for failure on the part of your orator to comply "with the terms of the ordinance aforesaid, the outstanding bills of "your orator would aggregate an enormous amount, which your ora-

"tor is at present unable to calculate, and which it is impossible to "calculate by any means whatsoever. And your orator shows that "by means thereof, and by reason of the financial irresponsibility of "a large number of your orator's customers and consumers, your "orator would be unable, in the event it was finally successful in "defeating the prosecution or prosecutions brought against it by the "city of Chicago, to collect from such customers and consumers the "amount of such outstanding indebtedness; and thereby your orator "shows unto your honors that your orator would suffer an enormous "loss, the exact amount of which your orator is unable to calculate, "and which your orator shows unto your honors it is impossible to "calculate, in any respect whatsoever, but which, in the opinion of "your orator, would amount to many hundreds of thousands of dol-"lars; wherefore, your orator shows unto your honors that the "damage to your orator would be irreparable and incalculable."

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
By C. K. WOOSTER, *Vice-Pres't.*
MEAGHER & WHITNEY, *Its Solicitors.*

JAMES F. MEAGHER, *Of Counsel.*

489 STATE OF ILLINOIS, *County of Cook, ss:*

C. K. Wooster, being first duly sworn, on oath deposes and says that he is the vice-president of the People's Gas Light and Coke Company; that he has read the foregoing amendment to the bill of complaint heretofore filed by the People's Gas Light and Coke Company in the above-entitled cause; that he knows the contents of the said amendment, and the matters and things therein set forth. Affiant further says that the said amendment to the said bill of complaint and the matters and things therein set forth, and the charges and allegations therein made, and each and every of them, are true, of affiant's own knowledge.

C. K. WOOSTER.

Subscribed and sworn to before me this 3rd day of January A. D. 1902.

[SEAL.] JOSEPH R. MORRIS,
Notary Public.

(Endorsed:) Filed Jan'y 3, 1902. S. W. Burnham, clerk.

And on to wit: the 15th day of January, 1902, there was filed in the clerk's office of said court in said entitled cause a certain opinion in words and figures following to wit:

Opinion.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

PEOPLE'S GAS LIGHT & COKE COMPANY, Complainant,
vs.
CITY OF CHICAGO ET AL., Defendant-.

The bill is to restrain the city of Chicago from putting in force an ordinance passed October 15, 1900, providing that corporations, companies or persons manufacturing, selling or distributing gas in the city of Chicago for illuminating or fuel purposes shall not charge individual consumers more than seventy-five cents per thousand cubic feet, provided the same is paid within ten days from the rendering of the bill, or eighty-five cents per thousand if payment is postponed. The ordinance provides penalties against the company, corporation or person violating its provisions. It is a general ordinance, relating to all manufacturers and distributors of gas in the city, and applicable to the complainant only because complainant happens to be such a manufacturer and distributor of gas in the city.

The bill, in substance, avers that the complainant is now furnishing such gas at the net rate of one dollar per thousand cubic feet, and that the enforcement of the ordinance in question, compelling a reduction, would be in violation of the contract embodied in the
490 charter of complainant under which its plant was installed and expanded and, therefore, in contravention of the first paragraph of section 10, article 1, of the Constitution of the United States, providing that no State shall pass any law impairing the obligation of contracts; also that its enforcement would be in violation of the fifth amendment to the Constitution, providing that no person shall be deprived of life, liberty or property without due process of law; also in violation of the fourteenth amendment to the Constitution, providing that no State shall deprive any person of life, liberty or property without due process of law, or deny to any person the equal protection of the laws. Unless, however, the complainant's charter constitutes a contract, it is difficult to see how the ordinance would result in depriving the complainant of its property without due process of law, or be a denial to complainant of the equal protection of the laws. The whole case, therefore, in its constitutional aspect, turns upon the question whether the ordinance violates any contract right of complainant as embodied in its charter.

The complainant's charter was by special act of the legislature, approved February 12, 1855, creating it a corporation with the usual powers and liabilities, with a capital stock not to exceed five hundred thousand dollars, and providing in section 4 that the company should furnish to the city of Chicago, for its public uses, gas at a rate not exceeding two dollars per thousand, and to the inhabitants of said city at a rate not exceeding two dollars and fifty cents per thousand.

February 7, 1865, this act was amended, allowing an indefinite

increase of capital stock; repealing expressly the 4th section relating to the limit upon price, and providing that "ten years after the passage of the act the common council of the city of Chicago may by resolution or ordinance regulate the price charged by said company for gas, but said common council of the city of Chicago shall in no case be authorized to compel the said company to furnish gas at a less rate than three dollars per thousand feet."

The contention of complainant is that no matter what may now be the general power of the city in the way of regulating the price of gas, under the constitution of 1870, and the corporation acts coming into force thereafter, the city may not, without impairing the obligation of complainant's contract, fix for complainant, a price at less than three dollars per thousand feet; and the decree invoked is to maintain this supposed constitutional right of inviolability of contract.

The city contends that in the absence of a clear provision in the charter in maintenance of complainant's contention, the general right of cities to regulate the price of gas is applicable to complainant, as well as to other manufacturers or distributors, and that the clause in question embodies no such clear prohibition or limitation as to interfere with the city's general right of regulation of rates. It is insisted that the clause was intended, not as a limitation upon the powers of the city, but as a restriction laid upon the legislature itself in respect of future legislation on the subject involved.

491 The interpretation of the clause is not free from considerable difficulty. It is not easy to see why the legislature should have intended it as a restriction upon itself or its successors; for however, precisely or *emphatically* such attempted restriction may have been formulated, it would have been an empty phrase when the succeeding legislature came into existence. Nor is it easy to see how the legislature intended that the prices of 1865, measured by the then depreciated dollar standard, should be made perpetual in favor of complainant, in face of the certainty that the legal-tender dollar would some time rise to its true value, and that, in the course of events, the cost of manufacturing gas would decrease. But in view of the conclusion to which I have come, it is needless to pivot this case upon the interpretation to be put upon this clause.

The Supreme Court of the United States in Freeport Water Company *vs.* Freeport City 180 U. S. 587 rules that under the Illinois constitution of 1870, and the subsequent acts, relating to municipalities and the incorporation of companies, there is reserved in the State the power to prescribe in the government of corporations such regulations as it may deem advisable; and that such right of regulation extends to the fixing, from time to time, of reasonable water rates, unless, possibly (and on this the court refrains from ruling) there be an explicit limitation to the contrary in the ordinance or contract under which the works are installed. It is clear, in the application of this decision to the case under consideration, that, as between the State and any gas companies organized under the constitution of 1870, and the act of the legislature in pursuance thereof, under ordinances, containing no explicit contract relating to minimum rates, there is a reserved

power in the State to regulate, within reasonable limits, the rates from time to time. Whether such power has been delegated to the city is an inquiry, that, for reasons stated later, I need not enter upon. In considering the phase of the case I now approach, it is a matter of indifference whether the general power of regulation be in the General Assembly, or in the city as an agent of the State. It is sufficient to the argument that it is lodged somewhere in the instrumentalities of the State.

It was disclosed at argument in answer to inquiries of the court, though not set forth in the bill—that the complainant originally manufactured and distributed gas upon the west side only, and that its south side and north side system was acquired through merger or purchase of other gas companies under the consolidation act of 1897.

Two of these companies, the Equitable Gas Company and the Consumers' Company, were organized under the constitution of 1870 and the acts in pursuance thereof. The Chicago Gas Light & Coke Company was organized under a special act of February 12, 1849, amended February 9, 1855; but contains no restriction upon the right of the General Assembly, or the city, to regulate from time to time the prices of gas; nor, so far as disclosed, is there in any
492 ordinance or contract between these companies and the city any restriction upon its general right of regulation from time to time.

The act under which the merger of the companies took place, approved June 5, 1897, provides that gas companies organized in Illinois are authorized and empowered to sell, transfer, convey or lease their real and personal property, rights, franchises and privileges, in whole or in part, to any other gas company doing business in the same city, and that such other gas company is authorized to purchase, lease hold and enjoy such property; also, that gas companies doing business in the same city, town or village may lawfully consolidate and merge into a single corporation (to be one of the merging companies) by complying with a certain procedure therein specified. A further section of the act provides that the consolidated corporation thus organized shall be subject to the legal obligations now resting upon each of the companies so merged, respectively, under their several charters and ordinances, in the same manner and to the same extent as if the companies had remained individual and distinct—none of said companies being in contemplation of the act extinguished.

In answer to an inquiry of the court at argument, counsel for the complainant contended that the merger of the other gas companies with the complainant was the equivalent of the complainant's extension, by original installation, of its works, and pipes into the field occupied by the other companies. Were this so, the supposed restriction contained in the charter of 1855 would follow the merger and extend to the entire system now operated by the consolidated company.

But a little reflection shows this position unsound. The act of 1855 authorizes complainant to erect its works and lay its pipes in the streets and alleys of the city, subject to the consent of the city council. In the absence of consent, no pipes could be laid. It is

possible that the city may not, in mere arbitrariness, withhold its consent, where the consent asked for was in the ordinary development of the complainant's plant; but absence of consent, founded on refusal to extend the field for the application of complainant's three-dollar minimum rate, would not be arbitrary. The city council was, therefore, from the organization of the complainant company, in contemplation of complainant's charter, a necessary party to any substantial extension of its plant, carrying the charter restriction as to regulation of rates. No consent of the city has been given to the merger, and therefore, no consent has been given to the enlargement of complainant's franchise, as affected by the limitation in the charter of 1855 relied upon. I do not see how the complainant can, in the absence of such consent, carry over to the territory acquired under the merger its supposed charter exemption from regulation of price. A contrary holding would enlarge the subject-matter of this exemption without the consent of the city—a result that the act of 1855 does not contemplate, but clearly negatives.

The terms of the merger act of 1897, reinforce this conclusion. It specifically provides, as already stated, that the consolidated
493 corporation shall be subject to the legal obligations now resting upon each of the companies absorbed. One of these obligations is (in the absence of a contrary contract provision) to submit to the State's right of reasonably regulating the price of gas from time to time. In this respect, the consolidated company stands precisely where each of the merged companies stood, and, as we have seen, neither of these was exempt from the State's general right of regulation. In respect to the system acquired through the merger, therefore, the complainant has no contract of exemption under the charter of 1855.

It is obvious then from what has been stated, as against the State's power to reasonably regulate rates from time to time, the complainant, to the extent, at least, that it is successor to the merged companies, enjoys no exemption from regulation. But it is urged that the powers of the General Assembly in this respect, are not delegated to the city, and, therefore, however this reasoning might apply to the powers of the General Assembly, it is inapplicable to any claim of such power upon the part of the city.

I refrain at this time from entering into so far-reaching a question—a question involving the policy of the State respecting the custody of some of its greatest powers. The question thus raised growing out of the interpretation of State statutes, is one primarily belonging to the State courts. My jurisdiction of the case under consideration does not extend to that question, unless its decision, one way or the other, is a necessary predicate to the constitutional question involved. I do not see that it is. If I hold that, under existing legislation, the city has not been delegated with the State's power to regulate rates, it is manifest that the real and adequate reason for annulling the ordinance complained of would be, not any provision of the Federal Constitution, but this lack of power, as shown in the State legislation. On the other hand, if I should hold that the State's power had been delegated to the city, then, according to the

reasoning already stated, the injunction prayed for would be refused. Whichever way one looks at this phase of the case, it turns, not on Federal constitutional law, but upon the interpretation of the State statutes, and, is not, therefore, within the meaning of the judiciary act, a case involving the construction of the laws or the Constitution of the United States. If complainant's substantial remedy against the ordinance complained of is lack of power in the city, its relief must be found in the State courts.

Whether, by the merger, the complainant has lost its right to exemption from regulation, to the extent that the consent was given to the installation of its original system, it is not necessary to decide, for the bill asks for no divisional relief. Nor is it necessary to consider the reasonableness of a seventy-five-cent rate, as provided in the ordinance, for no facts challenging the ordinance as unreasonable are set forth in the bill.

I realize that this case is one of great importance, both to the city and to the gas company, and that it may finally be brought under the review of the Supreme Court, and have, therefore, considered it upon a larger survey of the facts than the pleadings before
494 me justify. I suggest that the bill be amended to bring in these facts, or that the demurrer be withdrawn and an answer filed, bringing them in, reserving the right of demurrer to the bill as it now stands. If the facts thus disclosed are as I apprehend them, an order will then be entered in accordance with the conclusions of the law already stated.

P. S. GROSSCUP,
Circuit Judge.

(Endorsed:) Filed Jan. 15, 1902. S. W. Burnham, clerk.

And on to wit: the 6th day of June, 1902, being one of the days of the regular December term of said court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to wit:

Order of June 6, 1902, Giving Leave to Amend Bill.

25780.

THE PEOPLE'S GAS LIGHT & COKE COMPANY
vs.
CITY OF CHICAGO ET AL.

Now comes the parties by their solicitors, and the complainant has leave to file its amended bill herein *nunc pro tunc* as of January 15, 1902, and the defendant has leave to file its demurrer to said amended bill *instanter*, and now comes on for argument the demurrer to said amended bill, and the court having heard the same to conclusion and not being sufficiently advised in the premises, takes the same under advisement, with leave to counsel to supplement their oral arguments by briefs to be filed by the last of next week.

And on to wit: the fifth day of June, 1902, came the complainant in said entitled cause by its solicitors, and by leave of court first had and obtained filed in the clerk's office of said court its certain amended bill in words and figures following to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
THE CITY OF CHICAGO.

Amended Bill in Equity.

Sears, Meagher & Whitney, solicitors for complainant.
John W. Griggs, W. F. Sheehan, James F. Meagher, Thomas A. Moran, of counsel.

495 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

I.

To the honorable the judges of said circuit court:

And now comes the complainant, The People's Gas Light and Coke Company, and by leave of court first had and obtained files this its amended bill of complaint. And thereupon, humbly complaining (showeth unto your honors your orator, The People's Gas Light and Coke Company, that it is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and that it is and has been engaged in the manufacture, sale and distribution of gas in the city of Chicago for many years last past; that its principal place of business is in the city of Chicago; that it is a citizen of the State of Illinois and a resident and inhabitant of the northern division of the northern district of said State. That the city of Chicago is a municipal corporation organized and existing by virtue of the laws of the State of Illinois, and is a citizen and inhabitant of the northern division of the northern district of said State.

II.

Your orator further shows that your orator was organized as a corporation to do business in said State under and by virtue of a special statute of the State of Illinois, approved February 12, 1855, entitled "An act to incorporate the People's Gas Light & Coke Com-

pany," as amended by an act entitled "An act to amend an act entitled 'An act to incorporate the People's Gas Light and Coke Company,' approved February 12, 1855," which said amendatory act was approved February 7, 1865. That said act of the legislature entitled "An act to incorporate the People's Gas Light and Coke Company" approved February 12, 1855, is in the words and figures following, that is to say:

"An Act to Incorporate the People's Gas Light and Coke Company.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That Matthew Laflin, L. C. Paine Freer, A. G. Throop, D. A. Gage, Jno. S. Wallace, Geo. W. Snow, H. B. Bay, and R. H. Foss and their associates be and they are hereby created a body politic and corporate, with perpetual succession, by the name and style of "The People's Gas Light and Coke Company," and by that name they and their successors shall be capable in law of contracting and being contracted with, suing and being sued, defending and being defended in all courts and places and in all matters and places whatsoever, with full powers to acquire, hold, occupy and enjoy all such real and personal estate as may be necessary and proper for the construction, extension and usefulness of the works of said company, and for the management and
496 good government of the same; and they may have a common seal, and the same may alter, break and renew at pleasure.

SEC. 2. The corporation hereby created shall have full power and authority, forthwith upon their due organization under this act, to proceed to the erection of the necessary works for the manufacture of gas and coke, within said city of Chicago and on and after the 12th day of February, A. D. 1859, to manufacture and sell gas, to be made from any or all the substances or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of lighting the city of Chicago or the streets thereof and any buildings, manufactories, public places or houses therein contained, and to erect all necessary works and apparatus as aforesaid; and on and after the said 12th day of February, 1859, or sooner by and with the consent of the Chicago Gas Light and Coke Company, to lay pipes for the purpose of conducting the gas in any of the streets or avenues of said city, with consent of the city council: *Provided,* That no permanent injury or damage shall be done to any street, lane or highway in said city. The real estate which this corporation is entitled to hold shall not exceed in value $100,000.

SEC. 3. The capital stock of said company shall not exceed $500,000, to be subscribed for and paid in such proportions as shall be prescribed by the by-laws and rules for regulating the concerns of said company as they shall think proper and necessary respecting the management and disposition of the stock, property and estate of said company, the duties of the officers and agents to be employed the number and election of directors, and all such matters as appertain to the concerns of said company.

SEC. 4. It is an express provision of the foregoing act of incorporation that the said company shall furnish and supply to the city of

Chicago, for all its public uses, at the election of the proper authorities of said city, a sufficient supply of gas, at a rate not exceeding $2 per thousand feet; and the inhabitants of said city, at a rate not exceeding $2.50 per thousand feet."

Approved February 12, 1855.

III.

Your orator further shows that the act approved February 7, 1865, entitled "An act to amend an act entitled 'An act to incorporate the People's Gas Light and Coke Company,' approved February 12, 1855," is in the words and figures following, to wit:

"An Act to Amend An Act Entitled 'An Act to Incorporate the People's Gas Light and Coke Company,' Approved February 12, 1855.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the second section of said act be and the same is hereby so amended as to read as follows, viz: The corporation hereby created shall have full power and authority
497 forthwith to proceed to the erection and maintenance of the necessary works for the manufacture of gas and coke within said city of Chicago, and to manufacture, supply and sell gas, to be made from any and all substances or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of lighting the city of Chicago, any streets, buildings, manufactories, public places or houses therein contained, and to erect and use all necessary works and apparatus for such purposes aforesaid, and with the consent of the common council of said city to lay down and use all necessary pipes for the conducting of gas in and along any of the streets, alleys, avenues or public squares of said city: *Provided,* That no permanent injury or damage shall be done to any such street, alley, avenue or public square by the laying down of any such pipes.

SEC. 2. That section three of the said act be and the same is hereby so amended as to read as follows, viz: The capital stock of said company shall be five hundred thousand dollars, and may be increased from time to time, at the pleasure of said corporation; it may be divided into such shares, subscribed for, paid and transferred in such proportions and manner as shall be prescribed by the by-laws and regulations of said company.

SEC. 3. All the corporate powers of said corporation shall be vested in and exercised by a board of directors, and such officers and agents as said board shall appoint. The board of directors shall consist of not less than three nor more than five stockholders, who shall be chosen by the stockholders at such time and in such manner as the said corporation shall by its by-laws prescribe, and shall hold their office until their successors are elected and qualified, and may fill any vacancies which may happen in the board of directors by death, resignation or otherwise; they may adopt such by-laws, rules and

regulations for the government of said corporation and the management of its affairs and business as they may think proper, not inconsistent with the laws of this State, and the fourth section of said act is hereby repealed; but ten years after passage of this act the common council of the city of Chicago may, by resolution or ordinance, regulate the prices charged by said company for gas; but said common council of the city of Chicago shall in no case be authorized to compel the said company to furnish gas at a less rate than three dollars per thousand feet.

SEC. 4. The said corporation is hereby authorized to borrow money and to mortgage or lease any of its property or franchises.

SEC. 5. This act shall be deemed a public act, and noticed as such by all courts without pleading, and take *affect* from and after it's passage."

Approved February 7, 1865.

IV.

Your orator further shows that after the passage of said act, approved February 12, 1855, as amended by the act approved February 7, 1865, as herebefore set forth, your orator did act upon the privileges and powers therein granted, and did accept the same, and did construct and erect gas works in the city of Chicago, and
498 did with the consent of said city of Chicago, lay pipes for the distribution and delivery of gas to consumers thereof in said city of Chicago. That the consent of the city of Chicago was expressed in and by a certain ordinance passed and adopted by the common council of the city of Chicago on April 30, 1858, in the words and figures following, to wit:

An Ordinance Concerning The People's Gas Light and Coke Company. (Passed August 30, 1858.)

"Be it ordained by the common council of the city of Chicago:

SECTION 1. That permission and authority be, and the same are hereby granted to the People's Gas Light and Coke Company, of the city of Chicago, and State of Illinois, to lay their gas mains, pipes, feeders and service pipes in any of the streets, avenues, highways, public parks or squares throughout said city subject at all times, however, to the resolutions and ordinances of the common council of said city; *provided,* that said company when they shall open the ground to lay any pipe, or for any other purposes whatever, they shall restore the streets, pavements and sidewalks to a condition satisfactory to the city superintendent, with all convenient dispatch, and no more of any street or alley shall be opened or encumbered at any one time or in any one place, nor shall any street or alley be suffered to remain open or encumbered for a longer period than shall be strictly necessary to enable said company to proceed with their work; and said company shall be liable for all damages which may result from, or by reason of, opening or encumbering any street, alley, or sidewalk in said city of Chicago, and *provided further,* that when-

ever said company shall desire to lay their pipe, or do other work in any of the principal streets of said city, before they commence doing so they shall consult the mayor or city superintendent of public works, and unless the mayor or superintendent consent to such work being done at the particular time, they shall not proceed with such work on any such principal street, without the express permission of the common council of the said city of Chicago; and *provided, further,* that nothing herein contained shall be construed to conflict with any rights or privileges heretofore given by the common council to the Chicago Gas Light and Coke Company, or in conflict with the provisions contained in the act of incorporation of the People's Gas Light and Coke Company, to first obtain the consent of the Chicago Gas Light and Coke Company, if pipes are laid previous to February 12, A. D. 1859."

V.

Your orator further shows that, in acting on the privileges and powers granted to and accepted by your orator in and by said charter, and in carrying out and performing the duties and obligations upon your orator imposed by said charter, your orator has invested many millions of dollars in erecting and constructing gas works, plants and appliances, and in laying down pipes, mains, feeders and appurtenances, to enable your orator successfully to carry on
499 the business of manufacturing and delivering gas to consumers thereof throughout the city of Chicago, and thereby the said charter granted to the People's Gas Light and Coke Company, approved February 12, 1855, as amended by said act approved February 7, 1865, has become, and now is, a contract by and between your orator and the people of the State of Illinois; and your orator further shows that from and after the enactment of said act approved February 12, 1855, as amended by the act approved February 7, 1865, your orator did continuously, thence hitherto, remain in, and engage in, the business of manufacturing gas, and of selling and distributing said gas by means of mains, pipes, feeders and appliances laid in the streets of the said city of Chicago, and that your orator is now engaged in the business of manufacturing, selling and distributing gas in the city of Chicago, and that said contract by and between your orator and the people of the State of Illinois is a contract in full force and effect, and has not been repealed, annulled, cancelled, amended or otherwise prejudiced.

VI.

Your orator further shows that by said charter your orator is created a body politic and corporate, capable of contracting and being contracted with, and by said charter is granted full power and authority to erect and maintain the necessary works for the manufacture of gas within the said city of Chicago, and to manufacture, supply and sell gas to be made from any and all substances, or a combination thereof, from which illuminating gas is usually obtained, to be used for the purpose of lighting the city of Chicago and

any streets, buildings, manufactories, public places or houses therein contained, and to erect and use all necessary works and apparatus for such purposes aforesaid, and, with the consent of the common council of said city, to lay down and use all necessary pipes for the conducting of gas in and along any and all of the streets, alleys, avenues or public squares of said city, with full power to acquire, hold, occupy and enjoy all such real and personal estate as may be necessary and proper for the construction, extension and usefulness of the works of your orator, and for the management and good government of the same. That by virtue of said act of February 12, 1855, as amended by said act approved February 7, 1865, and the consent of the city of Chicago, as contained in said ordinance passed August 30, 1858, your orator was granted, with other powers, the power and authority to maintain and use and operate gas mains, pipes, feeders, service pipes and appliances and appurtenances in all of the streets, alleys, avenues, highways or public squares throughout the city of Chicago, at any time within the corporate limits of said city of Chicago, for the purpose of supplying gas to the residents thereof, consumers within said city of Chicago.

VII.

Your orator further shows that, relying upon the contract embraced in its charter, your orator has invested its capital and funds in the development of its business in the city of Chicago, and
500 on the date of the filing of this bill of complaint your orator owns real estate in the city of Chicago to the value of upwards of two millions of dollars; that it owns personal property in the city of Chicago to the value of upwards of ten millions of dollars; that it has many buildings, factories, retorts, plants and apparatus for the manufacture, sale and distribution of gas in the city of Chicago, and in all parts and divisions thereof, and that it has upwards of seventeen hundred miles of pipes and mains laid in the streets, alleys and avenues, highways and public squares of said city, and that it is now engaged in the operation of the plants, pipes, mains and apparatus aforesaid, and in the distribution of gas through said pipes, mains, feeders and appliances to the city of Chicago, and to the citizens thereof, consumers of said gas.

VIII.

Your orator further shows that for some years prior to the passage of the amendment of February 7, 1865, of your orator's charter, hereinbefore set forth, and at the time of the passage of said amendment, and for several years thereafter, the rate charged by your orator for gas to consumers thereof in the city of Chicago, was the gross rate of $4.25, and the net rate of $3.75, per thousand cubic feet, and that by virtue of the said charter to your orator, and under which your orator has ever since been and is now conducting and carrying on its business and affairs, your orator was given full authority touching the management of its business and affairs, and full authority to fix such rates as your orator might deem reasonable, best or

proper to charge for the gas sold and delivered by your orator to the consumers of said gas, customers of your orator, and that while in and by said act, approved February 7, 1865, it was provided that ten years after the passage of said act, the common council of the city of Chicago might by resolution or ordinance regulate the prices charged by your orator for gas, yet it was expressly provided in said act that the said common council of the city of Chicago should in no case be authorized to compel your orator to furnish gas at a less rate than $3 per thousand cubic feet.

And your orator charges that by said charter, and the acceptance thereof as aforesaid, by your orator, a contract was created between your orator and the people of the State of Illinois, by which it was provided and agreed, among other things, that the common council of the city of Chicago should never be authorized to regulate the rates charged by your orator for its gas so as to compel your orator to furnish gas at a less rate than $3 per thousand feet;

And your orator shows that pursuant to the powers and privileges granted by the terms of its charter, as hereinbefore set forth, your orator has from time to time fixed the rates charged by your orator for gas, sold by it in the city of Chicago, at such rates and prices as in the judgment of your orator it deemed proper to charge; and that your orator has from time to time decreased said rates, and that the price now and for some years last past charged by your orator for illuminating gas manufactured and sold by it in the city
501 of Chicago to the residents thereof and to the city of Chicago is the net rate of $1 per thousand cubic feet, and that the reductions from time to time made by your orator from the higher rates charged by your orator prior to and at the time of the passage of the said act of February 7, 1865, and for some years subsequent thereto, to the net rate of $1 per thousand cubic feet, have been made of your orator's own free will and voluntary act, and that said reduction in rates from time to time has not been by reason of any ordinance of the city of Chicago compelling or attempting to compel your orator to make any reduction or reductions in the price charged by your orator for the gas sold and delivered by it, in the city of Chicago, to the residents thereof and to the city of Chicago.

IX.

And your orator here shows that the city of Chicago itself is a customer of your orator and has been for many years last past, and that its bills as a consumer of the gas manufactured and sold by your orator during the year 1899, and consumed by said city of Chicago, amounted to upwards of five hundred and fifty thousand dollars, and that the bills for gas manufactured, sold and delivered by your orator to the city of Chicago, and consumed by the city of Chicago, for the year 1900, amounted to upwards of four hundred and ninety thousand dollars, and that the city of Chicago is a customer of your orator in the same sense and in the same way and under the same legal conditions as each and every other customer of your orator in the city of Chicago; and your orator further shows

that it has never delivered gas to the city of Chicago except upon annual contracts first made by and between your orator and the city of Chicago, and that it has never delivered gas to any customer or patron in the city of Chicago except upon contracts first made by and between such customer and your orator, and in each and every of such cases your orator has determined what the price should be for the gas to be furnished by your orator to such customer and to the city of Chicago, in accordance with the privileges and powers granted to your orator in its charter as aforesaid.

X.

Your orator further shows that by a statute of the State of Illinois it is provided, among other things, that all gas companies are authorized and empowered to sell, transfer and convey, or lease, their real and personal property, rights, franchises and privileges, in whole or in part, to any other gas company doing business in the same city, town or village, and such other gas company is authorized to purchase or lease, and to hold and enjoy, said property.

XI.

Your orator further shows that pursuant to the power and authority granted to and conferred upon gas companies doing business in the same city, town or village in the State of Illinois, by the act entitled, "An act in relation to gas companies, approved June
502 5th, 1897, in force July 1, 1897," and of the power granted to and conferred upon your orator in and by its charter, as aforesaid, the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, and the Chicago Economic Fuel Gas Company, in August, 1897, for a valuable consideration, transferred to your orator, and your orator then and there acquired and took over, all the gas mains, pipes, feeders, service pipes, connections and appurtenances, and all the manufacturing plants, buildings, machinery and property of the said named gas companies, and subsequently, and in January, 1898, the Mutual Fuel Gas Company and the Hyde Park Gas Company, transferred to your orator for a valuable consideration, and your orator then and there acquired and took over, all the gas mains, pipes, feeders, service pipes, connections and appurtenances, and all the manufacturing plants, buildings, machinery and property of the said Mutual Fuel Gas Company and of the Hyde Park Gas Company, and subsequently, and in November, 1898, the Calumet Gas Company transferred to your orator, for a valuable consideration, and your orator then and there acquired and took over, all the gas mains, pipes, feeders, service pipes, connections and appurtenances, and all the manufacturing plant, buildings, machinery and property of the said Calumet Gas Company.

And your orator states that all the property of the said several gas companies so transferred to and acquired and taken over by your

orator was, at the time of such transfer and acquisition, severally situated within the corporate limits of the city of Chicago.

XII.

Your orator further shows that said gas companies last named were severally corporations organized subsequent to 1870 under the general incorporation act of the State of Illinois, except the Chicago Gas Light and Coke Company and the Hyde Park Gas Company; that said gas companies severally were engaged in manufacturing and distributing gas in various sections of the city of Chicago; that the Consumers' Gas Company, the Equitable Gas Light and Fuel Company and the Chicago Economic Fuel Gas Company furnished gas only in a portion of the south division, so called, of the city of Chicago; that the Chicago Gas Light and Coke Company supplied gas in parts of the south and north divisions of the city of Chicago, and had laid some pipes and mains in the west division of the city of Chicago; that the Suburban Gas Company furnished gas in part of the territory formerly comprised within the town of Lake View; the Mutual Fuel Gas Company and the Hyde Park Gas Company severally suplied gas in a part of the territory formerly comprised in the town or village of Hyde Park, and the Calumet Gas Company in a certain other part of the territory formerly comprised in the town or village of Hyde Park. The Lake Gas Company furnished gas in a part of the territory formerly comprised within the corporate limits of the town of Lake. The Illinois Light,
503 Heat and Power Company did not distribute any gas to consumers, and your orator distributed gas chiefly in the west division of the ctiy of Chicago, so called, although its pipes and mains extended into the south division of the city of Chicago; that the plants, pipes, mains, feeders and appliances of all of said gas companies together were insufficient to supply all of the gas necessary to light the streets, alleys, highways, public squares and places of said city of Chicago and to supply all of the citizens of the city of Chicago who desired to be furnished with gas, and upon the acquisition by your orator of the plants and mains and pipes severally of said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, said companies severally ceased and desisted from manufacturing and supplying gas to consumers thereof, all of which consumers, however, and many thousand other consumers, in said city of Chicago, as quickly as connections, changes, and extensions of its enlarged system and property could be made by your orator, as hereinafter described, were and thence hitherto have been suplied and furnished with gas by your orator.

XIII.

Your orator further shows that the Chicago Gas Light and Coke Company is a body corporate, created by an act of the General As-

sembly of the State of Illinois, entitled "An act to incorporate the Chicago Gas Light and Coke Company," approved February 12, 1849, which act is in the words and figures following, that is to say:

An Act to Incorporate The Chicago Gas Light and Coke Company.

"Be it enacted by the people of the State of Illinois, represented in the General Assembly:

SEC. 1. That H. L. Stewart, W. S. Bennett, F. T. Sherman, P. L. Updike, P. Page, and their associates, be, and they are hereby created a body politic and corporate, with perpetual succession, by the name and style of 'The Chicago Gas Light and Coke Company,' and by that name they and their successors shall be capable in law of contracting and being contracted with, suing and being sued, defending and being defended, in all courts and places, and in all matters whatsoever with full powers to acquire, hold, occupy, and enjoy all such real and personal estate as may be necessary and proper for the construction, extension and usefulness of the works of said company, and for the management and good government of the same; and they may have a common seal, and the same may alter, break and renew at pleasure.

SEC. 2. The corporation hereby created shall have full power and authority to manufacture and sell gas, to be made from any or all of the substances, or a combination thereof, from which inflammable gas is usually obtained, and to be used for the purpose of
504 lighting the city of Chicago, or the streets thereof, and any buildings, manufactories, public places or houses therein contained; and to erect all necessary works and apparatus, and to lay pipes for the purpose of conducting gas in any of the streets or avenues of said city. *Provided*, That no permanent injury or damage shall be done to any street, lane or highway in said city. The real estate which this corporation is entitled to hold shall not exceed in value fifty thousand dollars.

SEC. 3. The capital stock of said company shall not exceed three hundred thousand dollars, to be divided into shares of twenty-five dollars, to be subscribed for and paid in such proportion as shall be prescribed by the by-laws and rules for regulating the concerns of said company; as they shall think proper and necessary respecting the management and disposition of the stock, property and estate of said company; the duties of the officers, artificers and agents to be employed; the number and election of directors, and all such matters as appertain to the concerns of said company. Said company shall have the exclusive privilege of supplying the city of Chicago and its inhabitants with gas for the purpose of affording light for ten years."

Approved February 22, 1849.

Your orator further shows that said act approved February 12, 1849, was amended by an act of the General Assembly, approved January 17, 1855, in the words and figures following that is to say:

"An Act to Amend An Act Entitled 'An Act to Incorporate The Chicago Gas Light and Coke Company.'

SEC. 1. The Chicago Gas Light and Coke Company is hereby authorized to increase the capital stock of said company one million of dollars, at such times and in such manner as the board of directors shall from time to time direct.

Said company is also authorized to borrow such an amount of money for the purpose of constructing, carrying on and completing its works, upon such terms as the board of directors shall judge best, and for such purpose may issue its bonds and mortgage its property; and all bonds heretofore issued for such purpose, and all mortgages executed to secure the same by said company, are hereby legalized.

Said company shall also have the right to purchase and hold such amount in value and extent of real estate in the city of Chicago, as may be necessary for its business, and to carry out the objects of its incorporation.

SEC. 2. So much of the act to which this is an amendment as conflicts with this act, is hereby repealed.

This act shall take effect from and after its passage."

Approved Jan. 17, 1855.

That said Chicago Gas Light and Coke Company, subsequent to its organization under said acts aforesaid, purchased and acquired real estate, and erected gas works and laid down certain gas
505 mains and connections and began and continued to manufacture and distribute gas until it disposed of its plant and property to your orator, as hereinbefore set forth.

XIV.

Your orator further shows that the Consumers' Gas Company is the successor of a corporation known as the Consumers' Gas, Fuel and Light Company, a corporation organized on or about January 25, 1882, for the manufacture, sale and distribution of gas for fuel and lighting purposes in the city of Chicago; that the common council of the city of Chicago, by an ordinance passed April 28, 1882, granted to said last-named company the right to construct, maintain and operate gas works within the city of Chicago, together with a right of way along, upon and under all the avenues, streets, alleys and public places in said city for the purpose of furnishing, operating, repairing and maintaining one or more lines or mains of gas pipes and all necessary feeders and service pipes in connection therewith, for lighting and fuel purposes, together with other privileges; which ordinance was accepted by said Consumers' Gas, Fuel and Light Company, and was in the words and figures following, to wit:

An Ordinance Granting Rights to the Consumers' Gas, Fuel and Light Company to Construct, Maintain and Operate Gas Works Within the City of Chicago (Passed April 28, 1882).

"Be it ordained by the city council of the city of Chicago:

SECTION 1. Subject to the terms and conditions of this ordinance there is hereby granted to the Consumers' Gas, Fuel and Light Company of Chicago, the right to construct, maintain and operate gas works within the city of Chicago, together with the right of way along, upon and under all avenues, streets, alleys and public places in said city, for the purpose of placing operating, repairing and maintaining one or more lines of gas mains and pipes and all necessary feeders and service pipes in connection therewith, for lighting and fuel purposes.

SEC. 2. Such company or corporation shall not lay its main pipes in any such avenue, street, alley or public place of said city, unless it shall at the said time lay down all feeders or service pipes necessary to make connection, without any subsequent disturbance of the pavement or surface of such avenue street or public place, with each and all building lots fronting or abutting thereon and all service pipes or feeders laid by said company shall be coated with Dr. Angus Smith's composition, or some other equally good material for preserving said service pipes or feeders from decay. Such company or corporation shall not charge any person desiring to make a connection with any service pipe laid, or to be laid by such company or corporation, more than twenty-five cents a foot for such service pipe when laid. Said company shall, when ordered by a majority of the city council, extend its main pipes in any block one-half of which shall be improved by buildings.

506 SEC. 3. That such company or corporation shall do no permanent injury to any street, sidewalk, alley, avenue or public place, or shade tree, or in any manner unnecessarily disturb or interfere with any water pipe, sewer or gas pipe, telegraph or electric wires, cables or pipes, now or hereafter laid by said city or any authorized company or corporation; and when such company or corporation shall open ground in the same, they shall forthwith restore the street, pavement, sidewalk or ground, or water pipe, sewer or gas pipe, to a condition equally good as before, at the expense of said company, and if said company shall fail or refuse so to do, the same may be done by said city, and the said company shall be liable for the cost thereof; and said company shall not make any excavations in any street, alley, avenue or public place, without first procuring a permit for that purpose from the department of public works of said city. When any excavation shall be made by said company in any street, alley or public place, paved with wooden blocks, the foundation boards or planks shall be removed without being cut, unless such cutting shall be especially permitted by the department of public works of said city. The said company shall not use the public fire-hydrants of said city, nor any water therefrom, without a license and permit from the department of public works of said city. The said company shall, upon notice from the department of public works of said city, remove or change any gas

main, pipe, service pipe or feeder which may be in the way of or interfere with the construction or erection of any viaduct, public building or other public structure within said city.

SEC. 4. Such company or corporation shall not open or encumber more of any street, avenue, alley or public place, at any one time, than may be necessary to enable it to proceed with advantage in the laying of any such main pipe, feeder or service pipe, nor shall said company or corporation permit any such street, avenue, alley or public place to remain open or encumbered for a longer period than shall be necessary to execute the work for which the same shall have been opened or without putting up the necessary barriers and lights, so as to effectually prevent the happening of any accident in consequence of such opening or encumbering of such street, alley avenue or public grounds.

SEC. 5. Such company or corporation shall be liable to and shall compensate the city of Chicago and pay any private individual, owner or owners, or parties interested in any property adjacent to any street, avenue, alley or public place, opened or injured by them, for all damages which may result from leaks of pipe, or by reason of such company or corporation having negligently opened, encumbered, protected or guarded any such street, avenue, alley or public place in said city.

SEC. 6. Such company or corporation shall be subject to all general ordinances of the city of Chicago in regard to gas companies. And the city of Chicago shall have the right, at any time, to provide for the appointment of one or more inspectors of gas with all the power and authority incident to such position, and which the said city may deem necessary to protect the city of Chicago in its
507 corporate rights and individual consumers of gas, against oppression or fraud; and, if the said city shall deem it necessary, to require any inspector (or other city official) to certify to the correctness of all gas bills of consumers of gas furnished by such company or corporation. All meters used by said company for measuring gas shall be subject to inspection and approval by such person or persons, officer or officers, as may be appointed by said city for that purpose, and said company shall pay all reasonable costs and charges of such inspection, the same to be fixed by the city council of said city.

SEC. 7. Such company or corporation shall supply gas light under uniform and sufficient pressure between sunset and sunrise of each day, and the quality of the same shall be as nearly uniform as practicable, averaging for any one month not less than sixteen sperm candles burning 120 grains per hour, to be determined by authorized photometrical tests, a five-foot burner being used.

SEC. 8. The rights and privileges hereby granted are upon the express condition that no gas flowing through any main pipe, feeder or service pipe, laid by said company or corporation or by its authority, shall be charged for, to general consumers thereof, at a rate exceeding one dollar and seventy-five cents per thousand feet cubic: Provided, that to all consumers using at the rate of 100,000 cubic feet and over, per annum, a rebate of at least twenty-five cents per

1,000 feet shall be allowed, and to attempt to collect at a greater rate than that herein specified for gas consumed from any such main pipe, feeder or service pipe, shall work a forfeiture of the rights and privileges hereby granted. The rights and privileges granted are upon the further express condition that such company or corporation shall not extend its pipes beyond the limits of the city, or allow any connection to be made with its pipes, so that gas shall be furnished through its pipes to any consumer outside the city of Chicago.

SEC. 9. In the event that such company or corporation, within three years from the date of the passage of this ordinance giving it permission to lay its main pipes, etc., shall not have built and completed gas works in said city sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days, and located within the limits of the city of Chicago, and shall not have commenced such work and expended thereon at least five hundred thousand dollars within eight months from the date of the passage of this ordinance, or if such company or corporation shall at any time enter into any combination, directly or indirectly, with any gas company or companies, concerning the rates (or price) to be charged for gas, either to the city or private consumers, or if such company or corporations shall directly or indirectly sell, lease or transfer its franchises and privileges to any other gas company or corporation, or if such company or corporation, having commenced to manufacture gas, shall cease for a period of more than ten consecutive days (unless by reason of unavoidable accident) to furnish gas through their pipes, the rights and privileges hereby granted shall cease and be of no more force or effect; or shall fail or refuse to extend its main pipes,
508 as required by section 2 of this ordinance, and it shall not require the judgment or decree of any court of law or equity to determine the said rights and privileges, but the same shall wholly cease and determine, absolutely and at once, upon the happening of any of the matters or things in this section specified.

SEC. 10. This ordinance shall not be in force as to said company or corporations until it shall have been accepted by such company or corporation, such acceptance to be made by the vote of such company or corporation, duly passed or recorded nor until such company or corporation shall have given and filed in the city clerk's office a good and sufficient bond, with two or more good and sufficient sureties, in the penal sum of $500,000, conditioned that such company or corporation shall and will, within three years from the date of the passage of this ordinance, build and complete gas works in said city, sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days, and located within the limits of the city of Chicago, and that the rate to be charged to the consumers of gas which may flow through the pipe laid by such company or corporation, or by its authority, shall never exceed the rate named and specified in section 8 of this ordinance, and that such company or corporation will not sell, lease or transfer its franchises and privileges to any other gas company, and shall and will not enter any combination with any

other gas company concerning the rate (or price) to be charged for gas, and to pay all damages which the city of Chicago, or any consumer of the gas furnished by such company or corporation, shall suffer by reason of the failure of such company or corporation to perform any of the obligations or conditions of this ordinance, such bond and sureties to be approved by the mayor and city comptroller.

SEC. 11. The liability of said company to said city, or to person who may be injured by the exercise by said company of any rights and privileges hereby granted, shall not be limited by the penalty of said bond, nor shall the remedy against said company be confined to the said bond, it being understood that such remedy is merely cumulative, and that said city of Chicago and any person or persons, shall have the same remedies against said company as it or they would or might have if no such bond were given. In case the duties of the department of public works shall be devolved by said city on any other department or officer, the permits and licenses herein mentioned shall be applied for to such department or officer."

Your orator further shows that gas works were erected by said Consumers' Gas, Fuel and Light Company, and some mains laid, and said corporation proceeded to manufacture and supply gas, in a part of the city of Chicago, and so continued until the happening of certain events as hereinafter mentioned. That said company executed, sold and delivered an issue of bonds secured by a mortgage or deed of trust upon its property and franchises, which bonds and mortgages were subsequently foreclosed, and on or about November 21, 1886, the Consumers' Gas Company was organized
509 for the purpose of manufacturing and selling fuel and illuminating gas in the city of Chicago, and by purchase acquired at the foreclosure sale under the mortgage or deed of trust executed and delivered by said Consumers' Gas, Fuel and Light Company, all and singular the plant, property, assets and franchises of said last-named corporation, and thereafter, and until its property was acquired and taken over by your orator in August, 1897, as aforesaid, said Consumers' Gas Company operated said plant and manufactured, sold and distributed gas in a part of the city of Chicago.

XV.

Your orator further shows that on or about August 3, 1885, the Equitable Gas Light and Fuel Company of Chicago was incorporated for the purpose of making gas of any and all kinds, and of using, supplying, furnishing or otherwise disposing of the same to the city of Chicago and its vicinity. By virtue of an ordinance adopted by the common council of the city of Chicago, August 10, 1885, there was granted to said Equitable Company the right to construct, maintain and operate gas works within the city of Chicago, together with a right of way along, upon and under all the avenues, streets, alleys and public places of said city, for the purpose of furnishing, operating, repairing and maintaining one or more lines of gas mains and pipes, and all necessary feeders and service pipes in connection therewith, for lighting and fuel pur-

poses; that under its charter powers and the privileges granted by said ordinance, the Equitable Gas Light and Fuel Company erected and maintained a gas plant for the manufacture of gas, and did lay down, operate and maintain some gas mains and connections, and did manufacture and sell gas in a part of the city of Chicago, until said Equitable Gas Light and Fuel Company disposed of its property and plant to your orator, as hereinbefore set forth; that the ordinance granted by the city of Chicago to the Equitable Gas Light and Fuel Company was in the words and figures following, that is to say:

An Ordinance Granting Rights to the Equitable Gas Light and Fuel Company to Construct, Maintain, and Operate Gas Works (Passed August 10, 1885).

"Be it ordained by the city council of the city of Chicago:

SEC. 1. Subject to the terms and conditions of this ordinance, there is hereby granted to the Equitable Gas Light and Fuel Company of Chicago, its successors and assigns, the right to construct, maintain and operate gas works within the city of Chicago, together with the right of way along, upon and under all the avenues, streets, alleys and public places in said city, for the purpose of placing, operating, repairing and maintaining one or more lines of gas mains and pipes and all necessary feeders and service pipes in connection therewith for lighting and fuel purposes.

SEC. 2. Such company or corporation shall not lay its main pipes in any such avenue, street, alley or public place of said city, unless — shall at the time lay down all feeders or service
510 pipes necessary to make connections without any subsequent disturbance of the pavement or surface of such avenue, street or public place with each and all building lots fronting or abutting thereon, and all service pipes or feeders laid by said company shall be coated with Dr. Angus Smith's composition, or some other equally good material, for preserving said service pipes or feeders from decay. Such company or corporation shall not charge any persons desiring to make a connection with any service pipe, laid or to be laid by such company or corporation, more than twenty-five cents a foot for such service pipe when laid. Said company shall, when so ordered by a two-thirds vote of all the alderman elected, extend their main pipes in any block three-quarters of which shall be improved by buildings.

SEC. 3. Such company or corporation shall do no permanent injury to any street, sidewalk, alley, avenue or public place, or shade tree, or in any manner unnecessarily disturb or interfere with any water pipe, sewer or gas pipe now or hereafter laid by said city or any authorized company or corporation, and when such company shall open ground in the same it shall forthwith restore the street pavement, sidewalk or ground, or water pipe, sewer or gas pipe, to a condition equally as good as before, at the expense of said company, and if said company shall fail or refuse so to do, the same may be done by said city, and the said company shall be liable for the

cost thereof; and said company shall not make any excavation in any street, alley, avenue or public place without first procuring a permit for that purpose from the department of public works of said city. When any excavations shall be made by said company in any street, alley or public place paved with wooden blocks, the foundation boards or planks shall be removed without being cut unless such cutting shall be specially permitted by the department of public works of said city. The said company shall not use the public fire-hydrants of said city nor any water therefrom, without a license or permit from the department of public works of said city. The said company shall, upon notice from the department of public works of said city, remove or change any gas-main pipe, service pipe, or feeder, which may be in the way of, or interfere with, the construction or erection of any viaduct, public building or other public structure within said city.

SEC. 4. Said company or corporation shall not open or encumber more of any street, avenue, alley or public place, at any one time, than may be necessary to enable it to proceed with advantage in the laying of any such main pipes, feeders or service pipe, nor shall said company permit any such street, avenue, alley or public place to remain open or incumbered for a longer period than shall be necessary to execute the work for which the same shall have been opened, or without putting up the necessary barriers and lights, so as to effectually prevent the happening of any accident, in consequence of such opening or encumbering of such street, alley, avenue or public grounds.

511 SEC. 5. Such company or corporation shall be liable to, and shall compensate the city of Chicago, and pay any private individual, owner or owners, or parties interested in any property adjacent to any street, avenue, alley or public place opened or injured by it, for all damages which may result from leaks of pipe, or by reason of such company having neglectfully opened, incumbered, protected or guarded any such street, avenue, alley or public place in said city.

SEC. 6. Such company or corporation shall be subject to all general ordinances of the city of Chicago in regard to gas companies. And the city of Chicago shall have the right, at any time, to provide for the appointment of one or more inspectors of gas, with all the power and authority incident to such position, and which the said city may deem necessary, to protect the city of Chicago, in its corporate rights, and individual consumers of gas against oppression or fraud; and, if the said city shall deem it necessary to require any inspector (or other city official) to certify to the correctness of all gas bills of consumers of gas furnished by such company. All meters used by said company for measuring gas shall be subject to inspection and approval by such person or persons, officer or officers, as may be appointed by said city for that purpose, and said company shall pay all reasonable costs and charges of such inspection, the same to be fixed by the city council of said city.

SEC. 7. Such company or corporation shall supply gaslight under uniform and sufficient pressure between sunset and sunrise of each

day, and the quality of the same shall be as nearly uniform as practicable, averaging for any one month not less than sixteen sperm candles, burning 120 grains per hour, to be determined by authorized photometrical tests, a five-foot burner being used.

SEC. 8. The rights and privileges hereby granted are upon the express condition that no gas flowing through any main pipe, feeder or service pipe, made by said company or by its authority, shall be charged for, to general consumers thereof, at the rate exceeding $1.75 per thousand cubic feet; *provided,* to all customers using 100,000 cubic feet and over per annum, a rebate of at least 25 cents per thousand feet shall be allowed, and to attempt to collect at a greater rate than that herein specified for gas consumed from any such main pipe, feeder or service pipe, shall work a forfeiture of the rights and privileges hereby granted.

SEC. 9. In the event that such company or corporation within three years from the date of the passage of this ordinance, giving it permission to lay its main pipes, etc., shall not have built and completed gas works in said city sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days and located within the limits of the city of Chicago, and shall not have commenced such works and expended thereon at least $100,000 within twelve months from the date of the passage of this ordinance, or if such company shall at any time enter into any combination, directly or indirectly, with any gas company or companies, concerning the rates (or price) to be charged for gas either to the city or private con-
512 sumers, or if such company shall, directly or indirectly sell lease or transfer its rights and privileges hereunder to any gas company or corporation now engaged in the manufacture and sale of gas within the city of Chicago, or commence to manufacture gas, shall cease for a period of more than ten consecutive days (unless by reason of unavoidable accident), to furnish gas through its pipes, the rights and privileges hereby granted shall cease and be of no more force or effect or shall fail or refuse to extend their main pipe as required by section 2 of this ordinance; and it shall not require the judgment or decree of any court of law or equity to determine the said rights and privileges, but the same shall wholly cease and determine, absolutely and at once upon the happening of any of the matters or things in this section specified.

SEC. 10. This ordinance shall not be in force as to said company or corporation until it shall have been accepted by such company or corporation, such acceptance to be made by a vote of such company or corporation and notice thereof in writing filed with the city clerk, nor until such company shall have given and filed in the city clerk's office a good and sufficient bond, with two or more good and sufficient sureties, in the penal sum of $100,000, conditioned that such company shall and will, within three years from the date of the passage of this ordinance, build and complete gas works in said city sufficiently extensive to enable it to manufacture and distribute gas to an amount not less than 10,000,000 feet in every thirty days, and located within the limits of the city of Chicago, and that

the rate to be charged to the consumers of gas which may flow through the pipes laid by such company, or by its authority shall never exceed the rate named and specified in section 8 of this ordinance, and that such company will not sell, lease or transfer its franchises and privileges to any gas company now engaged in the manufacture and sale of gas within the city of Chicago, and shall and will not enter any combination with any other gas company concerning the rate (or price) to be charged for gas, and to pay all damages which the city of Chicago, or any consumer of the gas furnished by such company, shall suffer by reason of the failure of such company to perform any of the obligations or conditions of this ordinance; such bond and sureties to be approved by the mayor and city comptroller.

SEC. 11. The liability of such company or corporation to said city or to any person who may be injured by the exercise by said company of any of the rights and privileges hereby granted, shall not be limited by the penalty of said bond, nor shall the remedy against said company be confined to the said bond, it being understood that such remedy is merely cumulative and that said city of Chicago, and any person or persons, shall have the same remedies against said company as it or they would or might have if no such bond were given. In case the duties of the department of public works shall be devolved by said city on any other department or officer the permits and license herein mentioned shall be applied for to such department or officer.

513 This ordinance shall take effect and be in force from and after its passage."

XVI.

Your orator further shows that on the 18th day of November, 1885, the Illinois Light, Heat and Power Company was incorporated for the purpose of making, distributing, selling or otherwise disposing of gases of any and every description, for any and all purposes for which the same should or might be or become useful, adaptable or available. That said Illinois Light, Heat and Power Company never procured any rights or privileges from the city of Chicago to lay pipes or mains in the streets, and said company laid no mains, pipes or feeders in the streets of the city of Chicago, but shortly after its incorporation, and upon the erection and construction of its gas-making plant, leased the same to your orator; and that there was thereafter manufactured in said plant a part of the gas sold and distributed by your orator through the mains, pipes, feeders and appliances of your orator.

XVII.

Your orator further shows that on or about July 5, 1881, the Lake Gas Company was incorporated for the purpose of manufacturing and supplying gas in the town of Lake; that said company, as successor or assignee of the Northwestern Gas Works Company, was, by the town of Lake, by ordinance adopted July 5, 1881, authorized to

lay down, maintain and operate gas mains, pipes, feeders and appliances in all the streets of the town of Lake; that thereafter said Lake Gas Company erected works and laid some pipes and mains in the streets of said town, and engaged in the business of manufacturing and selling gas in a part of said town of Lake, and so continued until said Lake Gas Company disposed of its plant and property to your orator as aforesaid. That in the year 1889 the town of Lake by annexation became a part of the city of Chicago, and the territory formerly comprised in said town of Lake has since remained within the corporated limits of said city of Chicago.

That the ordinance granted by the town of Lake to the Northwestern Gas Works Company, and so assigned to said Lake Gas Company, was and is in the words and figures following, to wit:

An Ordinance Granting Rights to the North Western Gas Works Company in Certain Territory (Passed July 5, 1881).

"*Be it ordained and enacted by the board of trustees of the town of Lake, and it is hereby enacted by authority of the same:*

SEC. 1. That exclusive and irrevocable privilege and authority is hereby granted to the said North Western Gas Works Company, a corporation, existing by virtue of the laws of New York its assigns and representatives, to furnish illuminating gas for the period of twenty-five years, and to open such streets, alleys, highways and public grounds in the said town of Lake as may be necessary to enable said gas works company to lay down, operate, maintain and extend its street mains and service pipes. The privileges and authority hereby granted are upon the following express conditions:

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First. That the said gas works company, its successors and assigns, shall and will forever indemnify and save harmless the said town of Lake against all and from any and all damages, judgments, decrees, costs and expenses of the same which it may suffer, or which may be recovered or obtained against said town of Lake, for or by reason of the granting of such privileges and authority, or for or by reason of, or growing out of, or resulting from the passage of this ordinance, or any other matter or thing connected therewith, or with the exercise by said company its grantees or assigns under, or by virtue of the provisions of this ordinance.

Second. That the said gas company, its successors and assigns, shall place all such streets, avenues, highways and public grounds in as good condition as they were before said work was begun.

Third. That the main supply-pipes of said gas company shall be laid on a line parallel to and ten (10) feet west of the center line of all streets running north and south, and on a line parallel to and ten (10) feet south of the center line of all streets running east and west, unless otherwise ordered by the board of trustees and in such a manner as not to interfere with any improvements said board may deem proper to make upon such streets, alleys, avenues, highways and public grounds, or have made heretofore.

SEC. 2. That for and in consideration of the foregoing exclusive privilege and authority, it shall be obligatory upon such gas works

company, its successors, representatives and assigns to construct in said town of Lake suitable buildings, erections and fixtures for the manufacture of gas for consumption and use in said town, at such place in said town as said company may desire, *provided*, such place is acceptable to said board of trustees, and to lay mains along such streets, alleys, avenues, highways and public grounds as the exigencies of business and private demands of the inhabitants of said town may require, and where the consumption of gas will justify the laying of mains and service pipes; and to furnish and supply gas to such public lamps along the line of such main pipes as may be laid, as specially provided by this ordinance, and shall also be ordered from time to time by the board of trustees of said town; such public lamps to have burners which will furnish an equivalent in illuminating value to that produced by a burner consuming four (4) cubic feet of good coal gas per hour, including the lighting, extinguishing, cleansing and repairing of said street and public lamps, the price therefor to be paid by said town, thirty-two 50/100 dollars per lamp per annum, and when the number of lamps shall reach two hundred and fifty, then at the price of thirty dollars per lamp per annum, and when the number of lamps shall reach five hundred or upwards, then at the price of twenty-seven 50/100 dollars per lamp per annum for the first ten years of the life of this ordinance, and for the balance of the term or life of this ordinance at such a price as may be mutually agreed upon, not to be less than twenty ($20) dollars per lamp per annum, to be paid monthly in all cases except as to the first year hereof, and for gas consumed and
515 services in connection with said lamps for such first year payment shall be made by a warrant upon the treasurer of said town, to be paid out of a fund collected by special assessments or property deemed benefited, to be levied during the year 1881, and if the same cannot, for any reason, be so paid, then out of the general fund of said town.

SEC. 3. That said lamps are to be lighted and extinguished in accordance with what is known as the Philadelphia scale or standard of time.

SEC. 4. That the style of the first one hundred twenty-five (125) lamps to be used shall be what is known as the Stewart improvement, and the style of the lamp-post to be used shall be like that now used in the city of Chicago.

SEC. 5. That said town of Lake shall pay for putting in all pipes, posts and fixtures for its own use and benefit from the main pipes, where the connection is made; said pipe and fixtures to be put in under the supervision of said company or their representatives.

SEC. 6. That said company shall furnish gas to citizens, residents and manufacturers of said town, for their private consumption, at a price not to exceed two (2) dollars and fifty (50) cents for the equivalent in illuminating power or value of one thousand (1,000) cubic feet of good coal gas of fourteen (14) candle-power, said citizens, residents or manufacturers to pay for putting in the necessary pipes and fixtures to connect the point of consumption with the main pipes—such connection to be put in under the supervision of said gas works company, or their representatives.

SEC. 7. That the said town of Lake further agrees that the right to light its streets, highways, public grounds or buildings shall not be granted to any other corporation, corporations, person or persons whatsoever during the term of this ordinance, and to purchase from said company, or its representatives, so much gas as may be required to properly illuminate such principal streets and public grounds of said town during the term of this ordinance as its board of trustees may from time to time order to be supplied with gas and lighted as aforesaid.

SEC. 8. Said gas works company to commence works within thirty (30) days from the acceptance of this ordinance and carry the same steadily forward until the mains are laid in the following-named streets, to wit: Halsted street, from Thirty-ninth street to Forty-third street; in Forty-third street, from Halsted street to Wentworth avenue; in Wentworth avenue, from Thirty-ninth street to Sixty-seventh street; in Forty-seventh street, from Wentworth avenue to State street; in Fifty-first street, from School street to the tracks of the Chicago, Rock Island and Pacific Railroad Company; in Thirty-ninth street, from Wentworth avenue to State street, and in State street, from Thirty-ninth to Fortieth street. The laying of said pipes in said streets to be completed during the year eighteen hundred and eighty-one (1881), unavoidable delays excepted, and in case such delays occur, to be completed as soon thereafter as practicable, due diligence to be exercised in the prosecution of the work by said gas works company.

516 SEC. 9. That at least one hundred and twenty-five public lamps shall be erected on the line of said main pipes as soon as said gas works company are prepared to furnish gas for the same. That said gas works company, by acceptance of this ordinance, agree to furnish said one hundred and twenty-five (125) lamp-posts, lanterns of the style above mentioned in the ordinance, together with lamp-posts, cocks and burners of the style and pattern generally used in the principal cities of the country, at sixteen (16) dollars and forty (40) cents each; and for service pipes, excavations and labor necessary to put the same in order for lighting, three (3) dollars and sixty (60) cents each additional for each lamp-post.

SEC. 10. That the one hundred and twenty-five (125) lamps, lamp-posts, burners and cocks above mentioned shall be paid for by warrant drawn on the treasurer of said town, to be paid out of a fund, when collected, to be collected by special assessment on the property deemed benefited by the erection of said lamps and lamp-posts, to be levied during the year eighteen hundred and eighty-one (1881).

SEC. 11. That in case the board of trustees shall deem it necessary to light the streets in isolated localities, where the consumption of gas will not warrant the laying of pipes, said company shall light the same with oil or gasoline lamps, at a price to be mutually agreed upon by said board of trustees and said company, at a price as low as any responsible parties will agree to light the same.

SEC. 12. This ordinance shall take effect and be in force from and after its passage and acceptance, and to be void unless the said gas

works company shall file its written acceptance of the same with the town clerk of said town of Lake within twenty (20) days after its passage."

XVIII.

Your orator further shows that on or about November 5, 1884, there was organized the Suburban Gas Company, for the purpose of manufacturing or obtaining gas made from coal or other substances and materials, and the distribution and sale of the same; that said Suburban Gas Company did not manufacture gas, but confined its operations to selling gas in a part of the town of Lake View, Cook county, Illinois, and by an ordinance of said town was authorized to supply and sell gas within the town of Lake View, and lay down mains and connections for the purpose of distributing gas. That subsequent to the incorporation of said company and the passage of said ordinance, said Suburban Gas Company laid some gas mains and sold gas in a part of said town of Lake View, until said company disposed of its property to your orator as hereinbefore set forth; that the ordinance of the town of Lake View granted to said Suburban Gas Company was and is in the words and figures following, to wit:

517 An Ordinance Granting Rights to the Suburban Gas Company in the Town of Lake View (Passed and Approved October 29, 1884; Accepted November 17, 1884).

"Be it ordained by the board of trustees of the town of Lake View:

SECTION 1. That permission and authority be and the same are hereby granted to the Suburban Gas Company to supply and sell gas made from coal or other substances, to be used for heating and illuminating purposes, within the town of Lake View, and to lay and maintain gas mains and service pipes for distributing said gas in any of the public streets, alleys, avenues, highways or grounds within the limits of said town.

SEC. 2. That before said company shall open any street, alley, highway or other public place for the purpose of introducing its mains or service pipes, it shall cause notice of its intention so to do, to be given to the corporate authorities of said town, specifying in such notice the streets or parts of street, alley or other public place in which it is proposed to introduce such pipes.

SEC. 3. In all cases where said company shall open any street, alley or other public place within said town, for the purpose of laying its pipes therein, it shall restore the same to its former condition as nearly as practicable with as little delay as possible; and no more of any street, alley or other public place shall be disturbed or incumbered in the laying of said pipe, nor shall the same remain open or incumbered for a longer time than shall be necessary to enable said company to complete its work as above provided. And said company shall be liable for any and all damages resulting from its negligent conduct in the prosecution of said work, and from its failure or neglect to properly guard and protect the excavations made by it in the progress thereof.

SEC. 4. That whenever said company shall desire to open any improved street it shall first procure a permit from said town so to do, and when any such improved street shall have been opened, said company shall restore the improvement to as good a condition as the same was before such opening, and upon its neglect or refusal to restore the same in such condition, then said town may properly restore the same and said company shall be liable to the town for any costs incurred thereby.

SEC. 5. That whenever said town shall by ordinance order the permanent improvement of any street, it may by further order direct said company to lay in such street its necessary pipes and house connections to all buildings along the line of such improvements.

SEC. 6. The said company shall furnish gas for consumption within said town of an illuminating power of not less than sixteen (16) candles, and to the corporate authorities of said town, for the lighting of the street, public buildings and public places within said town at a price not exceeding one dollar and fifty cents ($1.50) per thousand cubic feet to be measured by automatic regulator burners attached to the lamps, or otherwise as may be agreed between said company and the corporate authorities of said town; and the
518 price of gas to private consumers within said town shall not exceed two dollars ($2.00) per thousand cubic feet with a discount therefrom of fifty cents (50c.) per thousand cubic feet in case the bills therefor for each month shall be paid within the first ten (10) days of the next succeeding month. And that the town of Lake View shall cause street lamps to be erected a suitable distance along the public street in which the gas mains of said company shall be laid, to be connected with said mains, and shall immediately and for the period of five years thereafter, at all proper hours of the night, take and consume the gas of the said company for the lighting of said streets, and pay for the gas so consumed at and after the price and rate aforesaid. Settlements and payments to be made quarterly. The schedule for the time for lighting and extinguishing said street lamps, and the size of burners thereon, to be the same in use in the north division of the city of Chicago.

SEC. 7. That said company shall within six (6) months of the date of the passage of this ordinance lay in the street- or alleys of said town of Lake View, at least three (3) miles of street mains with proper service pipes connected therewith, for the supplying of gas to actual consumers, and shall within two years extend its mains to Ravenswood, and shall thereafter extend said mains and service pipes as rapidly as the increased demand for gas shall justify such extension.

SEC. 8. Unless the said 'Suburban Gas Company' shall within ten (10) days from and after the passage of this ordinance accept the same and the terms and provision- thereof, and notify the board of trustees of the town of Lake View of such acceptance, all the rights and privileges hereby granted to said company, shall be absolutely forfeited."

XIX.

Your orator further shows that on or about December 9, 1889, there was organized the Chicago Economic Fuel Gas Company, for the purpose of manufacturing and selling fuel or heating gas, and also illuminating gas, and the construction and operation of gas works or plants in the city of Chicago, and to distribute and sell said illuminating gas by means of pipes in the city of Chicago and the various cities and towns in the State of Illinois and throughout the United States, and for such purpose to construct or purchase from others the necessary works, machinery, plants and devices for the manufacture and distribution of illuminating gas in said city; that said company, by ordinance dated December 22, 1890, was given the right and privilege to construct and operate works for the manufacture of fuel gas only within the limits of the city of Chicago, and to place and maintain pipes and mains along the streets and public places of said city. That said ordinance was amended July 13, 1891, by adding the right to manufacture illuminating gas as well as fuel gas; that both of said ordinances were accepted and mains laid and fuel gas furnished by said company in a part of said city of Chicago until said company disposed of its property and plant to your orator, as hereinbefore set forth; that the original ordinance
519 granted by the city council of the city of Chicago to said Chicago Economic Fuel Gas Company was and is in the words and figures following, to wit:

An Ordinance Granting Authority to the Chicago Economic Fuel Gas Company to Construct and Operate Works for the Manufacture of Fuel Gas in the City of Chicago (Passed December 22, 1890; Accepted January 19, 1891).

"Be it ordained by the city council of the city of Chicago:

SECTION 1. Subject to the terms and conditions of this ordinance, there is hereby granted to the Chicago Economic Fuel Gas Company, its successors and assigns, the right to construct and operate works for the manufacture of fuel gas, only, within the city of Chicago, also with the right of way along, upon and under all the avenues, streets, alleys and public places in said city for the purpose of placing, operating, repairing and maintaining a line or lines of gas mains and pipes and all necessary feeders and service pipes in connection therewith, for the distribution of natural and manufactured fuel gas exclusively. Said gases shall, at all times, be of the best quality and highest efficiency respectively for the purposes. *Provided, however*, That the successors and assigns referred to in this section, or elsewhere in this ordinance, shall not be construed to include any other gas company, trust or corporation, as provided in section twelve (12) of this ordinance.

SEC. 2. Such company or corporation shall not lay its main pipes in any such avenue, street, alley or public place of said city, unless it shall at the time lay down all feeders or service pipes necessary to make connection without any subsequent disturbance of the pavement or surface of such avenue, street or public place with each and

all building lots fronting or abutting theeron, and all service pipes or feeders laid by said company shall be coated with Dr. Angus Smith's composition, or some *or or some* other equally good material for preserving said service pipes or feeders from decay. *Provided*, That the main or distributing pipes shall be laid on such portion of the public highway as the commissioner of public works may direct, and at all intersecting streets which are improved the main or distributing pipes shall be laid at right angles thereto and extend at least to the building line, and all feeders or service pipes shall be laid to the curb line of the street. Said company or corporation shall not charge any person desiring to make a connection with any service pipe laid or to be laid by such company or corporation more than 25 cents a lineal foot for such service pipe when laid. Said company shall, when so ordered by a majority vote of all the aldermen elected, extend their mains and supply pipes on any street, avenue or other public highway contiguous to the pipes of said company at the time in use or operation. *Provided*, Such extension shall cover territory one-half of which is improved by buildings.

SEC 3. That said company or corporation shall do no permanent injury to any street, sidewalk, alleys, avenue or public place, or shade tree, or in any manner unnecessarily disturb or interfere with any water pipe, sewer, gas pipe, conduit or other underground work now or hereafter laid by said city, or any authorized company or corporation, and when such company shall open ground in any street it shall forthwith restore the street, pavement, sidewalk or ground or water pipe, sewer, gas pipe, conduit or other underground work, to a condition equally as good as before, at the expense of said company, and, if said company shall fail or refuse so to do, the same may be done by said city and the said company shall be liable for and pay the cost thereof. Said company shall not make any excavation in any street, avenue, alley or public place without first procuring a permit for that purpose from the commissioner of public works of said city. When any excavation shall be made by said company in any street, alley or public place paved with wooden blocks, the foundation boards or planks shall be removed without being cut, unless said cutting shall be specially permitted by the commissioner of public works of such city. The said company shall not use the public fire-hydrants of said city or any water therefrom, without paying for same, under a license and permit from the commissioner of public works of said city. The said company shall, upon notice from the commissioner of public works of said city remove or change any gas main pipe, service pipe or feeder which may be in the way or interfere with the construction or erection of any viaducts, public building or other public structure, and whenever said city shall construct or form into a general subway any street, avenue, alley or other public highway, on or through which any pipe or pipes authorized by this ordinance may be located, said company, upon due notice from proper city authorities, shall occupy said subway and place and maintain its pipes and appurtenances therein at its own cost and expense.

SEC. 4. Such company or corporation shall not open or encum-

ber more of any street, avenue, alley or public place at any one time than may be necessary to enable it to proceed with advantage in the laying of such main pipes, feeder or service pipes, nor shall said company permit any such street, avenue, alley or public place to remain open or encumbered for a longer period than shall be necessary to execute the work for which the same shall have been opened, or without putting up the necessary barriers and lights so as to effectually prevent the happening of any accident in consequence of such opening or encumbering of such street, alley, avenue or public grounds, nor shall any two next parallel streets be excavated at the same time.

SEC. 5. Such company or corporations shall be liable to and shall compensate the city of Chicago, and pay any private individual, owner or owners, or parties interested in any property adjacent to any street, avenue, alley or public place opened or injured by it, for all damages which may result from leaks of pipes, or by reason of such company having neglectfully opened, encumbered, protected or guarded any such street, avenue, alley or public place in said city: *Provided*, said company shall, in the exercise of the rights and privileges hereby granted, be subject to all laws and ordinances relating to nuisances.

521 SEC. 6. Such company or corporation shall be subject to all general ordinances of the city of Chicago in regard to gas companies, and the city of Chicago shall have the right at any time to provide for the appointment of one or more inspectors of gas, with all the power and authority incident to such position and which the said city may deem necessary to protect the city of Chicago in its corporate rights and individual consumers of gas. All meters used by said company for measuring gas shall be subject to inspection and approval by such person or persons, officer or officers, as may be appointed by said city for that purpose, and said company shall pay all reasonable cost and charges of such inspection as the same may be fixed by the city council of said city, and said company shall pay the reasonable cost of all necessary city inspectors of the work of construction.

SEC. 7. The rights and privileges hereby granted are upon the express condition that no gas flowing through any main pipe, feeder or service pipe laid, controlled or operated by said company or by its authority, shall be charged for at a rate not to exceed sixty (60) cents per one thousand (1,000) cubic feet for natural gas, nor to exceed fifty (50) cents per one thousand (1,000) cubic feet for manufactured fuel gas, with a rebate of ten (10) cents per thousand (1,000) cubic feet on said above prices in case of payment before the 12th day of the month next succeeding that in which such gas is furnished, and to attempt to collect a greater rate than that herein specified shall work a forfeiture of the rights and privileges hereby granted.

SEC. 8. The laying of the pipes herein authorized shall be under the supervision and direction of the commissioner of public works, and where said company shall apply to the commissioner of public works for permission to lay its pipes on any given street in order to

reach any specified point on such street, and there shall be an alley parallel with said street and within three hundred feet of the same, the commissioner of public works shall order such pipe or pipes to be laid in such alley instead of such street, and the use of such alley shall be subject to all the conditions provided herein for streets.

SEC. 9. Said company shall pay annually to the city of Chicago, for and in consideration of the rights and privileges hereby granted, an amount equal to five (5) per cent. of the gross revenue or receipts of said company. Such payment shall be made in the manner following: At the expiration of one year from the time when said company shall commence to distribute gas to consumers in the city of Chicago the president or other chief officer of the company shall file with the city comptroller a statement verified under oath, showing the amount of the gross annual revenue or receipts of said company for the preceding year and shall, at the same time, pay to said comptroller the said amount of five (5) per cent. on the annual gross revenue receipts. Said payment to be made, as herein prescribed, annually during the term of this ordinance.

SEC. 10. This ordinance is granted upon the express condition that said company shall, within two years from the date of the acceptance of this ordinance, have laid, and in operation and
522 ready for supplying consumers, at least twelve (12) miles of its main pipes within the limits of the city of Chicago, and unless it shall so have constructed and laid the number of miles of distribution pipes herein referred to, then and under these conditions this ordinance shall be and become void and of no effect: *Provided*, however, that the time during which any legal proceedings shall be pending, whereby the said company, its successors and assigns, shall be prevented from or delayed in complying with the requirements of the section, shall not be taken or deemed any part of the time specified. *Provided, further*, however, that the city of Chicago may intervene in any suit and move for its dismissal, in the name of said company, in case such suit may be deemed by the city as collusive or for the purposes of delay or extension of the time herein specified.

SEC. 11. Said company shall file with the city clerk a good and sufficient bond to be approved by the mayor in the penal sum of one hundred thousand dollars ($100,000), conditioned that such company, its successors or assigns, shall comply with all the terms and conditions of this ordinance and shall indemnify and save harmless the city of Chicago against and from any and all damages, judgments, decrees and costs of whatsoever kind or nature, by reason of the passage of this ordinance and the exercise of any of the rights and privileges hereby or herein granted.

SEC. 12. This ordinance shall take effect and be in force from and after its passage and the filing and approval of the bond herein required and the acceptance thereof by said company: *Provided*, That if said approved bond and acceptance be not filed within thirty days of the passage hereof, this ordinance, shall be void and of no effect; and, *provided* still further, that if said company shall at any time enter into any combination directly or indirectly, w-th any gas

company or companies, concerning the rates or prices to be charged for gas, or is said company shall, directly or indirectly sell, lease or transfer its plant, property rights and privileges as herein authorized to any other gas company, trust or corporation now or hereafter engaged in the manufacture and sale — gas within the city of Chicago, or if said company, having commenced to manufacture gas, or furnish natural gas shall cease for a perion of more than ten (10) consecutive days, unless by reason of unavoidable accident, or injunction to furnish gas through their pipes, or if said company shall fail or refuse to extend its distribution pipes, as required by this ordinance the rights and privileges hereby granted shall cease and be of no more force and effect.

SEC. 13. The rights and privileges granted by this ordinance shall be granted for the terms of twenty-five (25) years from and after its acceptance, and all rights hereunder shall cease after the expiration of such term. The permission and authority hereby granted are upon the express terms and conditions that at the end of twenty (20) years after the passage of this ordinance the city of Chicago shall have the right to purchase the entire plant of said company and all of its property and effects, of every kind and description, within said city of Chicago, at an appraised value
523 which shall be ascertained and determined by three competent appraisers, who shall have free access to all the books, papers and other data bearing upon the subject. Said appraised value shall not include the value of any rights, privileges and franchises granted by the city. One of said appraisers shall be appointed by the mayor of the city of Chicago, one by said company, and one by the two so selected, and if they cannot agree upon the third appraiser, then any one of the chancellors of the circuit court of Cook county may appoint him. The said appraisers shall make report of the value of said property within six (6) months after their appointment to the mayor and city council, and said mayor and city council shall have the option, at the time within six (6) months after receipt of said report, to purchase said plant and property, together with all its appurtenances and equipments, at the appraised value."

That the amendatory ordinance, above referred to, granted by said city council of the city of Chicago to said Chicago Economic Fuel Gas Company was, and is, in the words and figures following, to wit:

An Ordinance Amending an Ordinance Granting to the Chicago Economic Fuel Gas Company the Right to Construct and Operate Works for the Manufacture of Fuel Gas Within the City of Chicago (Passed July 13, 1891).

"Be it ordained by the city council of the city of Chicago:

SECTION 1. That the ordinance by the city council on the 22nd day of December, 1890, granting unto the Chicago Economic Fuel Gas Company the right to construct and operate works for the manufacture and distribution of fuel gas within the city of Chicago, be, and the same is hereby amended, as follows:

Sec. 1 of said ordinance is hereby amended so as to read as follows:

'SECTION 1. Subject to the terms and conditions of said ordinance there is hereby granted to the Chicago Economic Fuel Gas Company, its successors and assigns, the right to construct and operate works for the manufacture of illuminating and fuel gas within the city of Chicago; also, with the right of way along, upon and under all the avenues, streets, alleys and public places in said city, for the purpose of placing, operating, repairing and maintaining a line or lines of gas mains and pipes, and all necessary feeders and service pipes in connection therewith, for the distribution of illuminating gas and natural and manufactured fuel gas. Said gases shall at all times be of the best quality and highest efficiency for the purposes: *Provided, however,* That the successors and assigns referred to in this section, or elsewhere in this ordinance, shall not be construed to include any other gas company, trust or corporation, as provided in section 12 of this ordinance.'

Also, by amending section 7 of said ordinance of December 22, 1890, so that said section shall read as follows:

'SEC. 7. The right and privileges hereby granted are upon
524 the express condition that the price to be charged for the several kinds of gas shall not be in excess of the following rates: For illuminating gas the charge shall not exceed one dollar and ten cents ($1.10) per one thousand (1,000) cubic feet; for natural gas the charge shall not exceed sixty cents (60) per one thousand (1,000) cubic feet, and for manufactured fuel gas the charge shall not exceed fifty cents (50) per one thousand (1,000) cubic feet, with a rebate of ten cents (10) per one thousand (1,000) cubic feet on said above prices for illuminating, natural and fuel gas, in case of payment before the twelfth day of the month next succeeding that in which said gas is furnished; and to attempt to collect a greater rate than that herein specified shall work a forfeiture of the rights and privileges hereby granted. Said company shall commence work within six months from the passage thereof or this ordinance shall be null and void.'

Also by amending section 9 of said ordinance, so that said section 9 read as follows:

'SEC. 9. Said company shall pay annually to the city of Chicago, for and in consideration of the rights and privileges hereby granted, an amount equal to three (3) per cent. of the gross revenue or receipts of said company from the sale of illuminating gas, and five (5) per cent. on the gross revenue or receipts of the said company from the sale of the natural gas or manufactured fuel gas. Such payments shall be made in the manner following: At the expiration of one year from the time when said company shall commence to distribute either illuminating gas or fuel gas to consumers in the city of Chicago, the president or other chief officer of the company shall file with the city comptroller a statement, under oath, showing the amount of the gross annual revenue or receipts of said company for the preceding year and shall, at the same time, pay to said comptroller the said amount of 3 per

cent. on the annual gross revenue or receipts from the sale of illuminating gas, and 5 per cent. on the annual gross revenue or receipts from the sale of natural or fuel gas. Said respective payments to be made as herein prescribed, annually, during the terms of this ordinance. And, in addition to said payments, said company shall, by the said city of Chicago, furnish to said city illuminating gas at the rate of not to exceed seventeen dollars and fifty cents ($17.50) per lamp per annum during the term of this ordinance.'

Also, by striking out the word 'two,' occurring in the third line of section 10 of said ordinance, and inserting in lieu thereof, the word 'three.'

SEC. 2. This ordinance shall take effect and be in force from and after its passage"

That the original ordinance above referred to, granted by said city council of the city of Chicago to said Chicago Economic Fuel Gas Company was also amended by an ordinance passed by the city council of said city on December 29, 1890, which amendatory ordinance is in the words and figures following, to wit:

525 An Ordinance Amending an Ordinance Granting Authority to The Chicago Economic Fuel Gas Company to Construct and Operate Works for the Manufacture of Gas (Passed December 29, 1890; Accepted January 19, 1891).

"Be it ordained by the city council of the city of Chicago:

SEC. 1. That the ordinance passed by the city council of the city of Chicago, on the 22d day of December, 1890, granting unto the Chicago Economic Fuel Gas Company the right to construct and operate works for the manufacture and distribution of fuel gas, within the limits of said city, be and the same is hereby amended, as follows: By striking out the last paragraph in section 2, which reads as follows: 'Said company shall, when so ordered by a mapority vote of all the alderman elected, extend their mains and supply-pipes on any street, avenue or other public highway contiguous to the pipes of said company at the time in use or operation; *Provided*, such extension shall cover territory one-half of which is improved by baildings.'

Also, by adding to section 3, the following:

'And it shall be the duty of said commissioner of public works to issue all permits asked for under this ordinance, without any delay and in accordance with the terms thereof.'

Also by striking out all after the first paragraph in section 13, so that said section 13 shall read as follows:

'SEC. 13. The rights and privileges granted by this ordinance shall be granted for the term of twenty-five (25) years from and after its acceptance, and all rights hereunder shall cease after the expiration of such time.'

SEC. 2. This ordinance shall take effect and be in force from and after its passage."

XX.

Your orator further shows that the Hyde Park Gas Company was incorporated in the year 1871 and subsequently was, by the town of Hyde Park, under an ordinance passed and approved June 24, 1871, and a subsequent ordinance passed and approved November 25, 1871, amendatory thereof, and a supplemental ordinance passed and approved March 15, 1875, given permission and authority to lay gas mains, pipes, feeders and service pipes in any and all the streets, alleys, avenues, parks and public grounds of the town of Hyde Park, which town of Hyde Park was subsequently and in the year 1889 annexed to and became a part of the city of Chicago, and has so remained thence hitherto; that subsequent to the incorporation of said Hyde Park Gas Company and the passage of said ordinance as aforesaid, said company erected a gas plant and laid gas mains in a part of the territory of Hyde Park formerly comprised in the town of Hyde Park, and manufactured and sold gas until the month of January, 1898, when it disposed of its said property and plant to your orator as aforesaid; that the ordinance, amendatory ordinance, and supplemental ordinance granted by said town of Hyde
526 Park to said Hyde Park Gas Company were and are in the words and figures following, that is to say:

An Ordinance Granting Rights to the Hyde Park Gas Company to Construct and Operate Gas Works in Certain Territory (Passed and Approved June 24, 1871).

"Be it ordained by the board of trustees of the town of Hyde Park;

SECTION 1. That permission and authority irrevocable be, and the same are hereby granted to the Hyde Park Gas Company of the town of Hyde Park, and State of Illinois to lay their gas mains, pipes, feeders and service pipes in any and all of the streets, alleys, avenues, highways, parks, squares and public grounds throughout said town, north of the center line of Sixty-seventh (67) street, upon the following conditions:

1st. Said company, when they shall open the ground to lay any pipe or for any purpose whatever, shall restore the grounds, streets, pavements and sidewalks to a condition as good as before they opened them, and satisfactory to the superintendent of public works or such other person as the board of trustees may appoint with all convenient dispatch.

2d. This permission shall be exclusive north of the south line of Sixtieth (60) street, for the period of fifteen years from this date: *Provided*, The works of said company of sufficient capacity to supply said exclusive territory with gas, shall be erected and gas furnished within eighteen months from this date, and the works shall be kept in operation and gas supplied and that no more than three dollars and fifty cents per thousand cubic feet shall be charged for gas to consumers.

3d. That no transfer of the privileges hereby granted shall ever be made to any other company or corporation, or to any individuals except as hereinafter provided, and the general office of said gas

company shall be forever kept in said territory over which said exclusive jurisdiction is hereby given.

SEC. 2. Whenever within the period of fifteen years from this date, in the opinion of the board of trustees of the town of Hyde Park, it shall appear to be for the benefit and interest of the said town that the works,, gas mains, pipes, machinery, fixtures and all other property, real, personal and mixed, belonging to said Hyde Park Gas Company and necessary and convenient for the purpose of manufacturing and supplying the said town and the citizens thereof with gas, should be owned and operated and controlled by the public authorities of said town, the said Hyde Park Gas Company shall surrender ownership, possession and full control to the said board of trustees of said town of Hyde Park for the use and benefit of said town, all of said property, real personal and mixed, together with all works, machinery, fixtures, gas mains, pipes, feeders and materials used in the manufacture of gas then on hand upon the payment to said Hyde Park Gas Company of the actual cost thereof, adding thereto the sum of ten per cent. per annum interest, from the time of such expenditure until such payment is made, deducting therefrom such sums as may have been real-
527 ized by said company as net revenue from said work; such cost, interest and net revenue to be ascertained by three sworn commissioners, one to be appointed by said board of trustees, one by said Hyde Park Gas Company, and a third by a judge of the circuit court of the county of Cook, State of Illinois: Provided, that the board of trustees shall have no power to accept of this option and make such purchase except for the sole use of the town, and that the works shall be exclusively owned and operated by said town.

SEC. 3. The privileges, grants and franchises contained herein are hereby declared null and void unless the said Hyde Park Gas Company shall, before the expiration of thirty days from this date, file with the clerk of this board their written acceptance and assent to the conditions set forth in this ordinance.

See following ordinances.

Passed and approved November 25, 1871.

SEC. 6. Be it ordained by the board of trustees of the town of Hyde Park: That section 2 of the ordinance relating to the Hyde Park Gas Company, adopted by this board on the 24th day of June, A. D. 1871, be and the same is hereby repealed."

An Ordinance Granting Further Rights to the Hyde Park Gas Company (Passed and Approved March 15, 1875).

"SEC. 7. Be it ordained by the president and board of trustees of the village of Hyde Park: That permission and authority be, and the same are hereby granted to the Hyde Park Gas Company, of the village of Hyde Park, to lay their gas mains, pipes, feeders and service pipes in any and all of the streets, alleys, avenues, highways, parks squares and public grounds throughout said vil-

lage south of the center line of Sixty-seventh street, upon the following conditions to wit:

1st. Said company, when they shall open the ground to lay any pipe, or for any other purpose whatever, shall restore the grounds, streets, pavements and sidewalk to a condition as good in all respects as before they opened them, and satisfactory to the superintendent of public works, or such person as the president and board of trustees of said village shall from time to time appoint. Such restoration to be made without unreasonable delay, and all excavations to be made in such manner that the public shall not be unnecessarily inconvenienced thereby.

2d. Said gas company to be responsible for any and all damages which may be occasioned by or result from the exercise of the permission or authority of this ordinance, conferred to or upon said company."

XXI.

Your orator further shows that the Mutual Fuel Gas Company was incorporated on or about April 25, 1889, for the purpose of manufacturing, distributing and selling gas, and the utilization of the same in the production of light, heat and power in the village of Hyde Park, and the said village of Hyde Park granted to
528 Hank & McClary, assignors of said Mutual Fuel Gas Company, the right, by ordinance, to lay down, operate and maintain gas mains and supply gas within the village of Hyde Park for both heating and lighting purposes; that thereafter said Mutual Fuel Gas Company erected works and engaged in the business of manufacturing and selling gas in a part of the town of Hyde Park, until it disposed of its property and plant to your orator, in the month of January, 1898, as hereinbefore alleged; that the ordinance granted to said Mutual Fuel Gas Company by said village of Hyde Park was, and is, in the words and figures following, that is to say:

An Ordinance Granting Rights to Hank & McClary to Construct, Operate, and Maintain Gas Works and to Pipe Oil in Certain Territory (Passed, Approved, Accepted, and Filed March 21, 1889).

"Be it ordained by the president and board of trustees of the village of Hyde Park:

SECTION 1. That permission and authority be, and are hereby granted to Charles D. Hank and Nelson A. McClary subject to the provisions hereinafter contained to construct, maintain and operate a system of works within the village of Hyde Park, to enable said Hank and McClary, or their assigns, to receive, produce and furnish for sale, natural and other gas and petroleum oil, or either of them; and to enable said Hank and McClary and their assigns to deliver such gas and oil to their customers, the right of way is hereby granted to them, along upon and under all avenues, streets, alleys and public places, rivers and canals in said village, for the purpose

of laying, operating, maintaining and repairing pipes, tubes, feeders and service pipes in connection with the said business of said Hank and McClary and their assigns: *Provided*, That this ordinance shall not grant authority to pipe oil north of 67th street in said village.

SEC. 2. Said Hank and McClary, or their assigns, shall do no permanent injury to any street, sidewalk, alley, avenue or public place, or in any manner unnecessarily disturb or interfere with any water pipes, sewer or gas pipe, telegraph or electric wires, cables or pipes now laid, or hereafter to be laid, by, or by authority of said village; that in laying their said pipes no greater distance than one-quarter of a mile shall be opened at any one time, and the work shall be done continuously and speedily prosecuted to completion under the direction of the superintendent of public works, or other proper officer of said village; that any streets, lanes, road- or alleys open for the purpose aforesaid shall be immediately restored to a condition equally as good as before opened by or for the benefit of said Hank and McClary and their assigns, by the superintendent of public works or other proper officer of said village, and the said superintendent of public works or other proper officer of said village shall make an estimate of the cost of restoring each section not exceeding one-quarter of a mile, as aforesaid, to a condition equally as good as before; and payment of the amount of the said estimates shall be made by said Hank and McClary, or their assigns, to the comptroller of the said village before such street, lane, road
529 or alley shall be opened and in no case shall the village be held liable for any loss or damage that may occur in the restoring of such street, lane, road or alley as aforesaid; *Provided, however*, That if the said Hank and McClary and their assigns shall restore each section, as aforesaid, of said street, lane, or alley to a condition satisfactory to the superintendent of public works, or other proper officer of said village within fifteen (15) days after the same shall have been opened by or for said Hank and McClary, or their assigns, then the amount of deposit as aforesaid shall be returned to said Hank and McClary, or their assigns, upon the order of the said superintendent of public works or other proper officer.

SEC. 3. Said Hank and McClary, or their assigns, shall put up all necessary barriers, lights and signals to prevent the happening of any accident in consequence of any opening or incumbrance of any street, alley, lane, avenues or other public ground in said village.

SEC. 4. Said Hank and McClary, or their assigns, shall be liable to, and by the acceptance of this ordinance, agree to pay and compensate the village of Hyde Park, or any private individual, owner or parties interested in any property adjacent to any street, avenue, alley or public ground opened or injured by them, for all damages such party may suffer caused by or resulting from negligence or want of proper care or skill in the construction of their works or lines of pipes, or in opening, incumbering refilling or guarding any opening or construction of any street, alley, or public place in said village or growing out of the escape of any oil or gas contained in or conducted through such pipes or tubes of said company.

SEC. 5. Said Hank and McClary, or their assigns, shall be subjected to all general ordinances of the village of Hyde Park in re-

gard to gas company or companies of a similar character or business or relating to the supply of petroleum oil, now in force or which may be hereafter passed.

SEC. 6. The village of Hyde Park, for itself and citizens reserves the right to put in sewerage, water and other pipes, and any and all improvements which it may deem necessary or proper, at any and all times, in its streets, alleys or public grounds, without any liability to said Hank and McClary o- their assigns, for so doing, and on reasonable notice said Hank and McClary, or their assigns, shall take proper care of their own pipes and property in such streets, alleys or public grounds.

SEC. 7. Whenever the board of trustees or their successors shall provide for the improvement of any street by paving or macadamizing the same, the said Hank and McClary, or their assigns, shall within sixty (60) days after receiving notice from the department of public works, or other proper authority, cause pipes suitable for the supply of gas upon said street to be laid therein, including such main or service pipes, feeders, and house connections to the curb lines of said street and connecting with the building lots thereon, as may be necessary or proper. *Provided, however,* That said Hank and McClary, or their assigns, shall not be required to lay pipe in any such street unless ordered so to do by the board of trustees, unless the pipe so laid shall connect with the general system of said Hank and McClary, or their assigns; and *provided, further,* that in case of the failure of said Hank and McClary, or their assigns, after such notice to lay such pipe and connections prior to such improvements, said Hank and McClary and their assigns shall not thereafter have the right to tear up said street nor any part thereof, except upon permission of the board of trustees or their successors, first specially had and obtained.

SEC. 8. Said Hank and McClary or their assigns, shall, unless prevented by due process of law, commence the erection of gas works within six months from the date of passage of this ordinance, and shall complete said works and furnish gas for fuel, power, light or heat within eighteen (18) months from said date, said works to be commenced and completed in good faith, to be of a permanent character and to have a capacity of not less than two hundred and fifty thousand (250,000) cubic feet of gas per day and to be intended to produce and supply to consumers regularly not less than said 250,000 cubic feet of gas per day. If said Hank and McClary or their assigns, shall fail to so commence said works and complete the same, and furnish gas within said periods of six (6) and eighteen (18) months or having commenced to supply gas, they shall, unless for causes beyond the control of said Hank and McClary, or their assigns, cease to supply gas for fuel, power, light or heat for a period of more than thirty (30) days, then the rights and privileges hereby granted shall cease and be of no more force and effect. *Provided, however,* That if said Hank and McClary, or their assigns, shall be delayed by any ordinance or resolution of the village of Hyde Park, then the period of any and all such delays shall be added to said periods of six (6) and eighteen (18) months.

SEC. 9. The pipes for oil and for high-pressure natural gas, that is

having a pressure exceeding ten (10) pounds to the square inch shall be of wrought iron of the best material and with joints of the best known character for securing natural gas or oil. Said pipes shall be placed at least three (3) feet below the surface of the ground, and it is hereby made the duty of said Hank and McClary or their assigns, to provide an escape system to carry off superfluous natural gas or oil to relieve undue pressure and prevent explosion.

SEC. 10. Said Hank and McClary shall forfeit and pay to the said village of Hyde Park the sum of twenty thousand ($20,000) dollars, as liquidated damages in case they or their assigns shall fail to commence the erection of gas works within six (6) months from the date of the passage of this ordinance, or in case they shall fail to complete said works and furnish gas within eighteen (18) months from said date, as provided by section 8 hereof; and said Hank and McCleary shall, within sixty (60) days from and after the date of the passage of this ordinance, execute and file with the president of the village of Hyde Park, a good and sufficient bond in the penal sum of fifty thousand ($50,000) dollars, to be approved by the board of trustees, conditioned, that said Hank and McClary and their assigns, shall at all times save said village harmless from and on account of all injury to persons or property that may be caused by the acts of the said Hank and McClary, or their assigns, or their em-
531 ployés, or by the escape of their gas or oil, and to make good and pay for all injury and damage to the property of the said village of Hyde Park that may be in anywise caused by the operations of the said Hank and McClary, or their assigns, hereunder, and further conditioned to pay the said village of Hyde Park said sum of twenty thousand ($20,000) dollars, liquidated damages provided for in this section.

SEC. 11. Said Hank and McClary, or their assigns, shall not charge or collect more than one dollar and twenty-five cents ($1.25) per thousand cubic feet for gas for illuminating purposes, not more than ninety cents ($.90) per thousand cubic feet for gas for heating purposes, with a rebate of twenty per cent. (20 per cent.) on said above prices in case of payment on or before the twelfth (12th) day of the month next succeeding that in which such gas is used by consumers thereof. When said Hank and McClary, or their assigns shall furnish illuminating gas, the said Hank and McClary, or their assigns, shall supply gas light under uniform and sufficient pressure between sunset and sunrise of each day, and the equality of the same shall be as nearly uniform as practicable averaging for any one month not less than sixteen (16) sperm candles burning one hundred and twenty (120) grains per hour; to be determined by authorized photometrical tests, a five (5) foot burner being used, and provided the rights and privileges hereby granted are upon the express condition that said Hank and McClary, or their assigns, shall not charge the village of Hyde Park more than ninety cents ($.90) per thousand cubic feet for illuminating gas, and not more than sixty-five ($.65) — per thousand cubic feet for heating gas.

SEC. 12. No transfer of the privileges hereby granted shall ever be made except by said Hank and McClary, but no transfer shall be

made by their assigns, and should Hank and McClary, or their assigns, become a party to any trust or combination respecting the quantity or quality or price of gas or oil, *and* such transfer, combination or transaction shall work a forfeiture of the rights and privileges hereby granted.

SEC. 13. This ordinance shall take effect and be in force when and as soon as said Hank and McClary, or their assigns, shall file with the clerk of the village of Hyde Park their acceptance in writing thereof together with their bond, as hereinbefore provided, and in case said Hank and McClary, or their assigns, shall not file said acceptance in writing, and said bond, within sixty (60) days after the passage and approval of this ordinance, then this ordinance shall be and become void and without force and effect."

XXII.

And your orator further shows unto your honors that the Calumet Gas Company was organized under the general incorporation act of the State of Illinois and obtained permission from the village of Hyde Park to lay down, maintain and operate pipes, mains and feeders for a certain portion of the territory formerly comprised in the villege or town of Hyde Park, to wit, that territory south of the center line of Sixty-ninth street in the village of Hyde
532 Park, which said territory was subsequently annexed to and became a part of and has since remained a part of the city of Chicago. That said Calumet Gas Company thereafter manufactured and sold gas in part of said territory until said Calumet Gas Company disposed of its plant and property to your orator, in November, 1898, as hereinbefore set forth and alleged, and that the ordinance granted by the village of Hyde Park to said Calumet Gas Company was and is in the words and figures following, that is to say:

An Ordinance Granting Rights to the Calumet Gas Company (Passed and Approved November 9, 1885).

"Be it ordained by the president and board of trustees of the village of Hyde Park:

SECTION 1. That permission and authority be and the same is hereby granted to the Calumet Gas Company, a corporation of the State of Illinois, to lay its gas mains, pipes, feeders and service pipes in any and all the streets, alleys, avenues, highway-, parks, squares and public grounds throughout the village of Hyde Park, south of the center line of Sixty-seventh street, upon the following conditions.

SEC. 2. Said Calumet Gas Company, when it shall open the ground to lay any pipes, or for any purpose whatever, shall without delay restore the grounds, streets, pavements and sidewalks to a condition as good as before they opened them and satisfactory to the superintendent of public works, or such other person as the board of trustees may appoint.

SEC. 3. The works of said Calumet Gas Company, shall be of sufficient capacity to supply said territory, and shall be commenced

within six months, and gas furnished within eighteen months from the passage of this ordinance, and no more than two ($2.00) dollars per thousand cubic feet shall be charged to consumers; provided, however, that in case payment shall be made by said consumer on or before the twelfth day next after the month in which the gas shall be consumed, a rebate of twenty-five (25) cents per thousand cubic feet shall be allowed to such consumer.

SEC. 4. The works of said Calumet Gas Company shall be located at a point south of the center line of Eighty-third street.

SEC. 5. The said Calumet Gas Company shall not have any privileges or rights in the territory bounded on the north by Ninety-fifth street, on the east by the center of Stony Island avenue, and on the south by the south line of Hyde Park, and on the west by the west line of Hyde Park.

SEC. 6. The said Calumet Gas Company, its successors and assigns, shall be subject to all the general ordinances of the village of Hyde Park in relation to gas companies, now in force, and which shall hereafter be in force in relation to the government of gas companies, and shall save and keep harmless the said village of and from all claims for damages growing out of any act on the part of said company, its successors or assigns, or their agents or servants.

SEC. 7. This ordinance shall be in force from and after its passage."

533 That said ordinance granted by said village of Hyde Park to said Calumet Gas Company was, on November 17, 1887, amended by an ordinance in the words and figures following, to wit:

An Ordinance Amending an Ordinance Granting Rights to the Calumet Gas Company (Passed, Approved, and Filed November 17, 1887; Accepted November 18, 1887).

"Be it ordained by the president and board of trustees of the village of Hyde Park: That section 1 of an ordinance granting rights and privileges to the Calumet Gas Company, passed November 9, 1885, be and the same is hereby amended to read as follows:

That permission and authority be and the same is hereby granted to the Calumet Gas Company, a corporation of the State of Illinois, to lay its mains, pipes, feeders and service pipes, in any and all the streets, alleys, avenues, highways, parks, squares and public grounds throughout the village of Hyde Park."

XXIII.

Your orator charges that in and by said statute of the State of Illinois, by virtue of which said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, severally, disposed of their manufacturing plants and pipes, mains

and feeders aforesaid to your orator, it is provided that any corporation purchasing or leasing the property of the company or companies, or into which any company or companies are consolidated and merged, shall be, at the time of such purchase, lease or merger, in the actual business of furnishing gas to consumers, and shall be subject to the following provisions: Such corporation shall not increase the price charged by it for gas of the quality furnished to consumers during any part of the year immediately preceding such purchase or lease, or such consolidation and merger, and shall furnish gas as good in quality as it furnished previous to such purchase or lease, or such consolidation and merger.

Your orator charges the fact to be that during the year immediately preceding the acquisition by your orator of the plants, pipes and mains of the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, as aforesaid, your orator was extensively engaged in the actual business of furnishing gas to consumers, in the city of Chicago, and that your orator charged and received for all illuminating gas sold by it the net rate or price of one dollar per thousand cubic feet; that since the acquisition of said plants and property aforesaid your orator has uniformly charged the same net rate or price for all illuminating gas
534 sold by it in the city of Chicago and the gas so supplied and sold by your orator has been, as matter of fact, better in quality and of higher candle-power than the gas theretofore sold by the companies, the plants, pipes and mains of which, severally, were as aforesaid acquired and taken over by your orator; and your orator charges, as matter of law, that the price or rate thus fixed was a fixing and regulating by the State of Illinois of the price or rate to be charged by your orator for all gas supplied by your orator subsequent to the acquisition by your orator of the manufacturing plants, pipes and mains of said gas companies aforesaid.

XXIV.

Your orator further shows that from and after the acquisition and taking over by your orator of the property aforesaid from said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, your orator has furnished and supplied to consumers of gas formerly in part supplied by said companies, severally, all the gas required by said consumers; that all the streets, avenues, highways, public squares and places within the city of Chicago, except those lighted by the said city by means of the municipal electric lighting plant, have been lighted by means of the gas manu-

factured and distributed by your orator; that your orator has furnished a gas of higher candle-power than was ever furnished by any of said companies, the property of which companies was so acquired and taken over as aforesaid by your orator; that your orator has extended, enlarged, improved and bettered the plants, mains and property it acquired from said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Illinois Light, Heat and Power Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company; that it has connected the pipes, mains and systems so as aforesaid acquired by it, with the pipes and mains that were, at the time of such acquisition, the property of your orator, making all necessary extensions of said pipes and mains for that purpose, and extended, connected, enlarged and improved the same, with the sole purpose and object of improving the service rendered and to be rendered by your orator to the city of Chicago and the inhabitants thereof, consumers of gas; that in extending, enlarging, improving, completing and bettering its system of gas mains, pipes, feeders and appliances, your orator has always and in every case proceeded under and acted upon and by virtue of the franchise, power and authority contained in its charter and by the consent of the city of Chicago aforesaid, and that in any of the acts which your orator has done as aforesaid since the acquisition by your orator of the property and plant of said
535 several companies as aforesaid your orator has never acted under any of the powers, franchises or privileges granted to or held by said several companies or any or either of them, and that in putting down, maintaining and operating works, plants, mains, pipes, feeders and appliances since August 5, 1897, your orator has not availed itself of any of the powers or privileges granted to the said Chicago Gas Light and Coke Company, or to the other companies aforesaid, or any or either of them, the property of which companies was so as aforesaid acquired and taken over by your orator; but, on the contrary, your orator charges the fact to be that every act and thing done by the People's Gas Light and Coke Company since August 5, 1897, in laying, maintaining, using, conducting and operating its plants and property, gas mains, pipes, feeders and appliances and appurtenances, and in carrying on its business and affairs, throughout the city of Chicago, in the way of manufacturing, distributing and selling gas to the city of Chicago and to the inhabitants thereof, consumers of gas, has been solely and exclusively under and by virtue of the power and authority, franchise and privilege, granted to your orator by its charter aforesaid and by and with the consent of the city of Chicago.

XXV.

Your orator further shows that in addition to the People's Gas Light and Coke Company and the gas companies, the properties of which, severally, were acquired by your orator as aforesaid, there

were then and are now other gas companies engaged in the manufacture, sale and distribution of gas in the city of Chicago, as well as a number of electric light companies engaged in distributing light to the inhabitants of the city of Chicago, consumers thereof; that said city of Chicago has built, and maintains and operates a considerable electric light plant, by means of which a part of the streets of said city are lighted.

XXVI.

Your orator further shows that the city of Chicago had full knowledge of the acquisition and taking over by your orator of the property aforesaid of said other gas companies heretofore named, and consented to the acquisition and taking over of said property by your orator, and in various ways approved, ratified and confirmed the acquisition and taking over of said property and the use thereof by your orator as aforesaid, under your orator's charter; and in this connection your orator states the fact to be that in the year 1899 your orator and the city of Chicago entered into a certain agreement in the words and figures following, that is to say:

"An Agreement, Made this Twentieth Day of July, 1899, Between the City of Chicago and the People's Gas Light and Coke Company (Herein Called the People's Company).

Whereas, the city of Chicago desires to arrange for a continuance of the lighting of the streets and other public places of the city for the remainder of the current year, upon the same terms as
536 those upon which said lighting was done in the year 1898, and to secure the benefit of rebates upon the price of gas furnished, as hereinafter set forth:

A certain agreement for the lighting of streets and other public places was entered into on the 17th day of June, 1891, between the City of Chicago on the one part, and the People's Company and certain other gas companies, viz: the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company, the Hyde Park Gas Company, the Lake Gas Company and the Suburban Gas Company, on the other part, and said agreement of June 17, 1891, was extended under certain other contracts subsequently made by the city of Chicago, and expired on December 31, 1897, and is no longer in force or effect. In August, 1897, the several other gas companies last above mentioned, excepting the Hyde Park Gas Company, were consolidated and merged into the People's Company, and subsequently, on January 10, 1898, there was also consolidated and merged into the People's Company said Hyde Park Gas Company. For the year 1898 no written contract was made by the city of Chicago with the People's Company for gas, but the People's Company furnished gas to the city upon substantially the following terms: For street lamps supplied with gas of not less than 24-candle power, through burners consuming four feet per hour, lighted in accordance with the time-table of 3,786

hours and 11 minutes per annum, and including the lighting, cleaning, extinguishing, furnishing and placing glass for lamps, repairing of all attachments except lamp frames, likewise the labor and alcohol for thawing, repairing stiff keys, furnishing and keeping in repair lamp-cocks, nipples, burners, tips, etc., the sum of twenty dollars per lamp, provided the bills therefor were paid within thirty days from the end of each quarter of the year, or judgment therefor was promptly obtained, where cash was not available. For gas of not less than 24-candle power furnished in public buildings and places, other than for street lamps, the price of $1.25 per thousand cubic feet, with a rebate of twenty-five cents per thousand cubic feet on bills paid within thirty days after the same were rendered.

There was credited by the People's Company to the city of Chicago upon the amount owing by the city of Chicago to the People's Company, for the year 1896, as aforesaid, three and one-half (3½) per cent. upon the gross receipts from the sales of gas by the People's Company during said year, including the gross receipts from the operation of the properties of said companies consolidated, as aforesaid, with the People's Company. For the first three months of the year 1899 the People's Company has been paid for gas furnished and work done at the same prices as for the year 1898, and the People's Company has paid, or allowed as a rebate upon the bills for such three months, the 3½ per cent. of its gross receipts from the sales of gas during such period, including the receipts from the operations of the properties of said companies so consolidated, as aforesaid, with the People's Company.

And whereas, the city council of the city of Chicago did
537 at its regular meeting, held July 6th, 1899, pass the following order, to wit:

'*Ordered,* That the mayor and comptroller be and they are hereby authorized and directed to arrange for the continuance of the lighting of the streets and other public places of the city of Chicago for the remainder of the current year upon the same terms with those upon which said lighting was done in the year 1898. And it is further

Ordered, That said mayor and said comptroller be and they are hereby authorized and directed to permit judgments to be entered against said city of Chicago for the cost of said lighting in excess of the amount provided therefor in the last annual appropriation bill,' and this agreement is made under and in pursuance with the authority and direction in said order contained;

Now, therefore, in consideration of the premises, this agreement witnesseth:

1. The People's Company shall continue to light the streets and public buildings and other public places of the city of Chicago for the remainder of the year 1899 upon the same terms as for the year 1898, as above set forth.

2. The People's Company shall pay or credit upon the amount payable by the city of Chicago hereunder the amount of 3½ per

centum upon the gross receipts of the People's Company, during the year 1899, from the sales of gas, and there shall be included in the said gross receipts the receipts from the operations of the properties of each of said gas companies which have been heretofore consolidated with the People's Company, as aforesaid. The payment or allowance of said 3½ per centum of gross receipts shall cease and discontinue if the existing franchises of said People's Company, or of any of said gas companies, so consolidated with the People's Company, shall not be recognized by the city of Chicago, or if the same, or any of them, shall be attacked by or at the instance of said city, or if the People's Company shall be prevented by the city of Chicago from extending its main in territory which has been, or may be annexed to said city. The city of Chicago shall have the right, at any time, to examine the books and accounts of the People's Company, to verify the statement of the People's Company as to the amount of 3½ per cent. of its gross receipts from the sales of gas for the year 1899; there shall be a statement furnished quarterly to the mayor of the city of Chicago by the president or secretary of said gas company, verified under oath of the officers making the same, showing the gross receipts of said company as aforesaid.

The Chicago Economic Fuel Gas Company having also been consolidated with the People's Company, there shall be paid to the city of Chicago, or credited upon money owing by the city of Chicago to the People's Company, the five per centum of the receipts from the sale of natural gas as specified in the ordinance granted by the city of Chicago to said Chicago Economic Fuel Gas Company.

4. The city of Chicago shall pay in cash, on or before August 1st, 1899, the net amount due the People's Company hereunder for the months of April, May and June, 1899. The net amount
538 which will be due for the months of July, August and September shall be payable on or before November 1st, 1899, and in case the city has not sufficient funds available to pay said amount, the People's Company shall receive a judgment therefor of a court of competent jurisdiction, at the term of such court at which suit may be instituted therefor by the People's Company. The net amount which will be due for the months of October, November and December, 1899, shall be payable on or before February 1st, 1900, and if the city of Chicago has not sufficient funds available to pay said amount the People's Company shall receive a like judgment therefor, at the term at which suit may be brought for the same. In the event that the People's Company shall not obtain such judgments, or either of them, for such deficiency or deficiencies, upon suit being brought therefor, as aforesaid, the People's Company shall be entitled forthwith to discontinue the supply of gas to the city of Chicago.

In witness whereof, the City of Chicago has executed this agreement, by its mayor and city comptroller, in that behalf duly authorized, and the People's Gas Light and Coke Company has caused this

agreement to be executed by its president, and its corporate seal to be hereunto attached, duly attested by its secretary.

CITY OF CHICAGO,
(Signed) By CARTER H. HARRISON, *Mayor.*

WILLIAM D. KERFOOT,
City Comptroller.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
By C. K. G. BILLINGS, *President.*

Attest:
[SEAL.] L. A. WILEY, *Secretary.*"

XXVII.

Your orator further shows that since August 5, 1897, the city of Chicago, by the common council thereof, has recognized the right of your orator to acquire and take over the property of said gas companies, and to use, operate and extend the same under and by virtue of your orator's charter, and has evidenced it acquies-ence in and consent and approval of such acquisition and taking over, use, conduct and operation thereof, by a large number of affirmative acts wholly inconsistent with the claim, if it should now be put forth, that said property was not lawfully acquired and taken over, and ever *said* has been maintained and used and operated by your orator, or that said property was acquired without the knowledge and consent of said city of Chicago; that among said acts of recognition and consent are the following:

1. At a meeting of the city council of the city of Chicago, held May 2, 1898, the following order was passed:

"Ordered, that the commissioner of public works be and
539 he is hereby directed to notify the People's Gas Light and Coke Company to put in gas stubs on Cornelia street, from Western avenue to Rockwell street, and on Cortez street, from Western avenue to California avenue."

2. At a meeting of said city council, held July 6, 1898, the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to place gas mains in Blucher street, from Lill place to Wood street."

3. At a meeting of said city council, held July 11, 1898, the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to order the People's Gas Company to lay their main and other pipes in Beach court, south of Irving Park boulevard, in order that the contractor may proceed with his work."

5. At a meeting of said city council, held November 6, 1899, the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to have the People's Gas Light and Coke Company

lay the service pipes and mains in Evanston avenue, from Devon avenue north to city limits."

6. At a meeting of said city council, held November 20, 1899, the following order was passed:

"Ordered, That the People's Gas Light and Coke Company be and is hereby ordered to lay gas mains in the following streets, to wit, Herndon street, from Beldon avenue south to Garfield avenue north."

9. At a meeting of said city council, held January 3, 1900, the following order was passed:

"Ordered, The People's Gas Light and Coke Company is hereby directed and instructed to lay gas main in Ridgeway avenue, from Armitage avenue to Courtland avenue."

10. At a meeting of said city council, held January 8, 1900 the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in Ridgeway avenue, from Armitage avenue to Courtland street."

11. At a meeting of said city council, held February 5, 1900, the following order was passed:

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay their gas mains in Turner avenue, between Twenty-third and Twenty-sixth streets, as the street is now being graded, preparatory to paving."

12. At a meeting of said city council, held June 25, 1900, the following order was passed:

"Ordered, That the commissioner of public works order the People's Gas Light and Coke Company to lay gas main on
540 Central Park avenue between Douglas boulevard and Twelfth street before street is paved."

13. At a meeting of said city council, held June 25, 1900, the following order was passed:

"Ordered, That the People's Gas Light and Coke Company be and they hereby are directed to lay gas mains and pipes in Wrightwood avenue, at all places now in process of being paved, and not already supplied with gas mains and pipes."

14. At a meeting of said city council, held July 9, 1900, the following orders were passed:

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in Melrose street, from Kimball avenue to Drake avenue, and in School street, from Kimball avenue to 500 feet west."

"Ordered, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas main at once in Milwaukee avenue from Allen avenue to Belmont avenue."

15. At a meeting of said city council, held November 12, 1900, the following order was passed:

"Ordered, That the commissioner of public works be and he is

hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in Monticello avenue, between Armitage avenue and Courtland street."

16. At a meeting of said city council, held January 7, 1901, the following order was passed:

"*Ordered*, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in North Kedzie avenue, between School street and Roscoe street."

17. At a meeting of said city council, held February 18, 1901, the following order was passed:

"*Ordered*, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains at once in the following-named streets:

North Springfield avenue, from Irving Park boulevard to West Berteau avenue.

North Avers avenue, from Irving Park boulevard to West Montrose avenue.

North Harding avenue, from Irving Park boulevard to West Cullom avenue.

North Ridgeway avenue, from Elston avenue to West Montrose avenue.

North Lawndale avenue, from West Belle Plaine avenue to West Montrose avenue.

North Monticello avenue, from Irving Park boulevard to West Montrose avenue.

North 40th avenue, from Elston avenue to West Montrose avenue."

18. At a meeting of said city council, held March 11, 1901, the following order was passed:

541 "*Ordered*, That the commissioner of public works be and he is hereby directed to notify the People's Gas Light and Coke Company to lay gas mains in Elston avenue, from Montrose avenue to North 43d avenue; in Hamlin avenue, from Irving Park boulevard to Montrose avenue, and in Melrose street, from Elston avenue to California avenue."

XXVIII.

Your orator further shows that it paid to the city of Chicago, in cash, upwards of $300,000 under said agreement dated July 20, 1899, and that it has in each year since August 5, 1897, paid to said city of Chicago, the 5 per centum of the receipts from the sale of natural gas specified in the ordinance granted by said city of Chicago, to the Chicago Economic Fuel Gas Company, and that it has at heavy expense, in all things complied with the orders and directions of the city council of the city of Chicago respecting the laying down of pipes, mains and services, and the supplying of gas, as specified in the orders set out in the twenty-seventh paragraph of this your orator's bill of complaint; which pipes, mains and services have been laid in all divisions of the city of Chicago; and your orator charges that, relying upon its charter rights, and upon the recognition thereof and acquiescence therein by the city of Chicago,

your orator has from time to time expended large sums of money in acquiring lands in various sections of the city of Chicago, upon which it has placed its retorts, buildings, holders and other apparatus since August 5, 1897, and has expended large sums of money in laying down gas mains, pipes, feeders and other appliances and appurtenances throughout the city of Chicago, and in all sections thereof, and in maintaining, improving and extending its system of pipes, mains, feeders and plants, and in carrying out and performing the orders and directions contained in the said several resolutions, orders and ordinances of the city council of the city of Chicago, hereinbefore set forth, and otherwise, in connection with perfecting its system of mains, plant, pipes, feeders and appurtenances; that since August 5, 1897, said city of Chicago has issued to your orator upwards of seventy-five thousand permits authorizing your orator to make excavations in the public streets throughout the city of Chicago, and in all divisions thereof, for the purpose of laying down pipes, mains, feeders and service pipes, and in repairing, renewing, extending, enlarging, improving and completing the same; and your orator charges that each and every permit so issued by the city of Chicago to your orator since August 5, 1897, was and is a separate and distinct recognition and affirmance by the city of Chicago of the right by your orator to maintain and use the pipes, mains, feeders and appliances of your orator in the streets, alleys, highways, public ways, places and squares throughout the city of Chicago; and in this connection your orator shows and states the fact to be that there are hundreds of miles of gas pipes in the streets of the city of Chicago acquired as aforesaid by your orator from said Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the
542 Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, that are no longer available for use in distributing gas, by reason of the fact that they were laid at an early day, were small in size, and are, by reason of wear and decay, no longer available, nor can they be, nor are said pipes now, used in distributing gas to consumers; that in all such cases your orator has put down under authority of its charter and ordinance from the city of Chicago, and under authority of the permits issued by the city of Chicago to your orator, new and enlarged pipes and mains, which pipes and mains your orator now maintains, uses and operates under the power and authority contained in the charter granted to it by the State of Illinois, and the consent of the city of Chicago, as aforesaid, in supplying gas to consumers, residents of the city of Chicago, and to the city of Chicago; that since acquiring the plants, pipes and mains of the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Illinois Light, Heat and Power Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company, and the Calumet Gas Company, the constant aim and purpose of your

orator has been to extend and enlarge the same, and the system of plants, pipes, mains and feeders of your orator, and to improve and better the service of furnishing gas rendered and to be rendered by your orator to the residents of the city of Chicago, consumers of gas, and to the city of Chicago. That your orator is constantly engaged in replacing and renewing pipes and mains heretofore laid in the streets of the city of Chicago, either by your orator or by the companies whose property was acquired by your orator, with larger pipes and mains, in order to keep pace with the increased and constantly increasing demands made upon your orator to supply the residents of Chicago, and the city of Chicago, with gas; and your orator has been constantly so engaged since August, 1897, (all of which is evidenced by the large number of permits for opening the streets of Chicago issued to your orator by the city of Chicago as aforesaid); that for nearly fifty years continuously, your orator has been, and now is, furnishing gas to consumers thereof in Chicago, and to the city of Chicago, by virtue of its own right and authority and under its own franchises, and on the enlargement of its system, plants and property, by the acquisitions aforesaid, it continued to manufacture and supply gas as theretofore, under the power and authority contained in its charter, as aforesaid, and the consent of the city of Chicago, and not by virtue of the franchise or in discharge of any duty of any or either of said companies, the property and plant of which was acquired by your orator as aforesaid; that your orator is the identical corporation and entity created by said charter aforesaid, and is the corporation which, under the powers and privileges contained in said charter
543 and by and with the consent of the city of Chicago as aforesaid, is furnishing gas to the city of Chicago, and to the consumers of gas resident in said city of Chicago; and your orator charges the fact to be that it would be practically impossible at this time to distinguish the pipes, mains and feeders laid and placed by your orator and those acquired by your orator from the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company, and the Calumet Gas Company, because many hundred miles of the pipes so acquired have been taken up and removed by your orator because no longer serviceable, and no longer adapted to the demands of the service at the place or places where the same were originally laid; that upwards of five hundred miles of gas mains and pipe have been newly laid by your orator in all sections and divisions of the city of Chicago since August 5, 1897, in extending, enlarging, improving and bettering the plant and system of your orator, until, at this time, the system of pipes, mains, feeders and appliances of your orator has been largely, if not entirely, remodeled, relaid and improved, and it has at this time become and is practically impossible to determine what pipes, mains and feeders, if any such there be remaining, were acquired from said Chicago Gas Light and Coke Company, the Consumers' Gas Company,

the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company; that while it is undoubtedly true that many miles of such pipes still remain in the streets of the city of Chicago, it is likewise true that in places your orator has taken up for long distances the mains and pipes originally laid, and put down in lieu thereof other and larger pipes and mains of greater capacity and improved quality, and conducted through the same the gas manufactured by your orator. And in this connection your orator further shows, and charges the fact to be, that the entire system of pipes, mains and feeders acquired as aforesaid by your orator from the Consumers' Gas Company, except as the same has been changed, cut out, enlarged, relaid, replaced or improved by your orator since August 5, 1897, was connected with the system of pipes, mains and feeders acquired by your orator, from the Chicago Economic Fuel Gas Company, and thereafter by your orator used solely in the distribution of natural gas, for fuel and heating purposes; that substantially all of the system of pipes, mains and feeders acquired as aforesaid by your orator from the Equitable Gas Light and Fuel Company, except so far as the same has been changed, cut out, enlarged, relaid, replaced or improved by your orator subsequent to August 5, 1897, has likewise been devoted exclusively to the distribution by your orator of said natural gas for fuel and heating purposes, and that everything done by your orator in the way of enlarging, relaying, replacing, putting down,
544 extending, changing and improving said pipes, and mains, plants, feeders and appliances has been so done by your orator under the power and authority contained in its charter and franchise, and all in pursuance of the general plan and project of your orator to extend, enlarge, improve and better its system of mains, and more fully to carry out and perform the purpose and object for which it was incorporated by the State of Illinois, and being generally to furnish and supply the entire city of Chicago and all the inhabitants thereof with gas, all of which has been done by your orator in reliance upon its charter powers and the consent of the city of Chicago and in reliance upon the recognition of and ecquiescence by the city of Chicago in the acquisition and operation by your orator of the plant and property so as aforesaid b yyour orator acquired from the corporations aforesaid, and in reliance upon the large sum of money paid by your orator to the city of Chicago under said agreement, dated July 20, 1899; and your orator further charges that in order to enable your orator to comply with the duties and obligations on your orator by its charter imposed, and in extending and enlarging said mains and system, your orator has been obliged to rebuild and enlarge all of the manufacturing plants so as aforesaid acquired by your orator from the Chicago Gas Light and Coke Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Illinois Light, Heat and Power Company, the Mutual Fuel Gas

Company, the Hyde Park Gas Company and the Calumet Gas Company, and has acquired additional real estate and built and constructed additional buildings thereon, and installed in the buildings so erected, and in the buildings acquired as aforesaid, new and improved machinery and appliances for the production of gas, and generally your orator has substantially rebuilt all of said plants and relaid or replaced substantially all of the gas pipes and gas mains in the city of Chicago acquired by your orator from said Chicago Gas Light and Fuel Company, the Consumers' Gas Company, the Equitable Gas Light and Fuel Company of Chicago, the Suburban Gas Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, the Mutual Fuel Gas Company, the Hyde Park Gas Company and the Calumet Gas Company, and has expended in doing said work, and in extending, enlarging, repairing and connecting its system of pipes, mains, services and feeders, upwards of five millions of dollars; and your orator insists that it would be inequitable and unjust to permit the city of Chicago to now claim that it has never given its consent to the acquisition of such property by your orator, and the operation thereof under the powers and privileges in and by the charter of your orator granted to it, if such consent should be held to be material, and your orator insists that the city of Chicago is now estopped to set up any such claim or pretense.

Your orator further shows unto your honors that at the time of the acquisition and taking over by your orator of said plants, pipes, mains and property from said other gas companies as aforesaid, said companies were indebted upon legal obligations of said com-
545 panies, severally, all of which obligations were secured by mortgages or deeds of trust upon the property, severally, of said companies, executed and delivered by said companies, severally. That the amounts of said indebtedness as aforesaid, secured by mortgage or deed of trust in every case, were as follows:

First-mortgage five per cent. bonds of the Chicago Gas Light and Coke Company, dated July 1, 1887, and due July 1 1937, $10,000,000.

First-mortgage six per cent. bonds of the Equitable Gas Light and Fuel Company of Chicago, dated 1885, and due July 1, 1905, $2,000,000.

First-mortgage five per cent. bonds of the Consumers' Gas Company, dated December 1, 1886, and due December 1, 1936, $4,246,000.

First-mortgage seven per cent. bonds of the Illinois Light, Heat and Power Company, dated November 18, 1885, and due November 1, 1915, $500,000.

First-mortgage six per cent. bonds of the Lake Gas Company, dated July 1, 1885, and due July 1, 1915, $300,000.

First-mortgage five per cent. bonds of the Chicago Economic Fuel Gas Company, dated January 2, 1893, and due January 1, 1916, $2,500,000.

Thereafter, and on or about the first day of September, 1897, your orator executed and delivered its mortgage or deed of trust to the Farmers' Loan and Trust Company, a corporation organized and existing under the laws of the State of New York, as trustee, called

its refunding mortgage, to secure its refunding five per cent. gold bonds, amounting in the aggregate to the sum of $40,000,000, issued and to be issued, of which amount $29,046,000 of bonds were reserved to take up the bonds theretofore issued by said Chicago Gas Light and Coke Company, the Equitable Gas Light and Fuel Company, the Consumers' Gas Company, the Illinois Light, Heat and Power Company, the Lake Gas Company, the Chicago Economic Fuel Gas Company, as aforesaid, and certain other bonds theretofore issued by your orator, then outstanding, aggregating $9,500,000, as follows:

First-mortgage six per cent. bonds of your orator, dated November 9, 1874, and due November 1, 1904, aggregating $2,100,000;

Second-mortgage six per cent. bonds of your orator, dated December 5, 1874, and due December 1, 1904, aggregating $2,500,000;

First consolidated six per cent. bonds of your orator, dated April 1, 1893, and due April 1, 1943, aggregating $4,900,000.

That to secure said issue of bonds, your orator executed and delivered its mortgage or deed of trust, as aforesaid, and conveyed all and singular its property, of every kind and nature, including as well the plants, machinery, pipes, mains, feeders and appliances so as aforesaid acquired by your orator from said other gas companies. A copy of said mortgage, and of the bonds secured thereby, is hereby referred to with like effect as if herein set out at length.

And your orator charges the fact to be that after the execution and delivery of said refunding mortgage aforesaid, your orator issued, pursuant to the terms of said instrument, $2,500,000 of
546 bonds secured thereby, for the purpose of taking up and retiring the $2,500,000 of first mortgage five per cent. bonds of the Chicago Economic Fuel Gas Company, dated January 2, 1893, above mentioned, and your orator charges the fact to be that said refunding mortgage, shortly after its execution and delivery, and before the issuance of any bonds thereunder, was filed for record in the office of the recorder of deeds of Cook county, Illinois.

Your orator further shows unto your honors, and charges the fact to be that in issuing said refunding mortgage, and to raise money for the purpose of extending, enlarging, improving and bettering its system of plants, mains, pipes, feeders and appliances, and for the purpose of construction, maintenance, repair, reconstruction and operation of its various lines of pipes, mains, feeders and appliances, and for the purpose of taking up and retiring the bonds issued by the companies, the property of which companies was so as aforesaid by your orator acquired, your orator relied upon the contract in its charter contained between your orator and the People of the State of Illinois, that the common council of the city of Chicago should in no case be authorized to compel your orator to furnish gas at a less rate than $3 per thousand cubic feet; that, as above set out, many of said outstanding bonds will be due and payable within the next two years, and it will be necessary for your orator to borrow money upon the faith of said refunding bonds to assist in the payment and retirement of said bonds aforesaid as they mature; that by the mortgages securing all of said outstanding bonds, all the property, rights, privileges and franchises of the companies issuing said bonds, in-

cluding the contract rights created in and by the charter of your orator as aforesaid, together with all the income, issues, and profits arising therefrom, have been mortgaged to trustees therein named, for the use and benefit and security of the holders of such bonds; that said bonds have been sold to parties purchasing the same in the full faith and belief that the city of Chicago was prohibited by said charter from compelling your orator to furnish gas at a less than $3 rate per thousand cubic feet; that said provision in said charter is a right of property, and the action of the city council of the city of Chicago, in passing the ordinance hereinafter set out, is an impairment of the obligation of said contract as against the rights of the holders of said bonds, under and by virtue of the security created by said various mortgages or deeds of trust.

XXIX.

Your orator further shows that, notwithstanding the privileges and powers conferred upon your orator by its charter, as aforesaid, and notwithstanding the agreement contained in said charter, that the common council of the city of Chicago should in no case be authorized to compel your orator to furnish gas at a net rate less than three dollars per thousand feet, and notwithstanding the contract thereby existing by and between your orator and the People of the State of Illinois, the said common council of the city of Chicago, as representing said city, did recently, arbitrarily, unlawfully
547 and unwarrantably, claiming that it had the power to regulate the price of gas sold and distributed by your orator to the city of Chicago and to residents thereof, and without investigation or judicial proceedings of any kind, and without giving or permitting a hearing of any sort to your orator, on or about the 15th day of October, 1900, pass a certain ordinance, which said ordinance is in the words and figures following, to wit:

"Be it ordained by the city council of the city of Chicago:

SEC. 1. That no corporation, company or companies, firm or persons manufacturing, selling, supplying or distributing gas in the city of Chicago for illuminating or for fuel purposes shall charge, exact, demand or collect from any consumer thereof more than the sum of seventy-five (75) cents per one thousand (1,000) cubic feet of gas consumed or used. Said sum of seventy-five (75) cents per one thousand (1,000) cubic feet of gas shall be the net price charged, exacted, demanded or collected from each consumer. Manufactured gas so furnished shall afford a light of not less than twenty (20) candle power, to be measured and ascertained at the place of consumption in said city by the most modern appliances known to science for measuring the candle-power of illuminating gas.

Provided, however, That any corporation, company or companies, firm or person distributing or selling gas for fuel or illuminating purposes in the city of Chicago may, in addition to said seventy-five (75) cents per one thousand cubic feet of gas furnished to such consumer, add a penalty of not exceeding ten (10) cents for each one thousand (1,000) cubic feet of gas so supplied to such consumer

for delinquency or non-payment of the bill, statement or charge of said corporation, company or companies, firm or person after ten days from the date at which said bill, statement or charge is made and furnished to such consumer.

SEC. 2. That any company, corporation, person or persons who shall remove any meter or meters from the house, store, factory or premises of any consumer of gas in the city of Chicago, against the will and consent of any such consumer of gas who is willing to pay for gas furnished him, it or them by any such company, corporation, person or persons, and tenders the amount due at the price established and fixed in section 1 of this ordinance, shall be subject to a penalty of not less than twenty-five (25) nor more than two hundred ($200) dollars for each and every offense; *Provided, however*, That any company, corporation, person or persons furnishing gas to consumers in the city of Chicago shall have the right to remove any meter or meters for the purpose of repairing the same, on condition that such meter or meters so removed shall be replaced or a new one substituted in its place within twenty-four (24) hours of the time of the removal of any such meter or meters.

SEC. 3. That any company, corporation, person or persons who shall, in violation of the provisions of the preceding sections, charge or require the city of Chicago, or any citizen thereof, or any consumer of gas therein, to pay for gas furnished to it or them, or either of them, a sum in excess of seventy-five (75) cents per thou-
548 sand cubic feet, or who shall furnish to the said city of Chicago, or any citizen thereof, manufactured gas less than twenty (20) candle power shall be subject to a penalty of not less than twenty-five dollars ($25), nor more than two hundred dollars ($200) for each and every offense.

SEC. 4. This ordinance shall be in full force and effect from and after the 2d day of January, A. D. 1901; *Provided*, That said ordinance shall not go into effect until it has been duly published, as provided by law."

XXX.

Your orator further shows that the said ordinance was not afterwards vetoed, repealed, modified or amended, and remains in full force and effect as the enactment of the common council of the city of Chicago, and of the city of Chicago. And your orator charges that the said defendant, The City of Chicago, claims that under and by virtue of the provisions of the charter of your orator and under and by virtue of the general police powers claimed by the city of Chicago to have been granted to it by the State of Illinois, the city of Chicago has the right and power to regulate and fix the price at which gas shall hereafter be furnished by your orator to the citizens of the city of Chicago and to the city of Chicago, and that the said city of Chicago so claims the said right regardless of the privileges and powers conferred upon your orator by its charter from the State of Illinois, and of the contract therein embodied by and between your orator and the People of the State of Illinois, and regardless of the inhibition in said charter contained, prohibiting the city of Chi-

cago from compelling your orator to furnish gas at a less rate than three dollars per thousand cubic feet.

Your orator further shows that the city of Chicago announces, and has threatened, that it will forthwith proceed to enforce the said ordinance against your orator in the event of any violation of the terms thereof by your orator; and your orator further shows that it has been advised by sundry citizens of the city of Chicago that in the event of the failure of your orator to comply with the terms of said ordinance so passed by the said city of Chicago as aforesaid, they will immediately take steps, by means of prosecution in the courts of the State of Illinois, to enforce against your orator the penalties denounced in said ordinance upon a refusal by your orator to comply with the terms of said ordinance, in respect to the price charged by your orator for gas, as aforesaid.

XXXI.

Your orator further shows that it has now upwards of three hundred thousand customers in the city of Chicago, in addition to the city of Chicago itself, to which your orator is daily selling and distributing gas, and that during the years 1900 and 1901 your orator sold and delivered to such customers, at the rates specified, an enormous amount of gas in each year, aggregating many hundred million cubic feet in each year, and that on the date of the passage of said ordinance your orator was engaged in selling illuminating gas to such customers, including the city of Chicago, at the net rate of
549 one dollar per thousand cubic feet, which said net rate of one dollar per thousand cubic feet your orator had fixed as the price of its illuminating gas sold and delivered in the city of Chicago, and which said rate so fixed by your orator had been charged by your orator in the city of Chicago for upwards of four years last past, and which rate, in the judgment of your orator, was a just, fair and proper rate for your orator to charge for its illuminating gas as aforesaid.

And your orator further shows that many of its said consumers are people of small means and are financially irresponsible; that your orator renders to each of its customers monthly statements for the gas consumed by each of said customers during the preceding month, and collects therefor within a short time thereafter; that unless said bills are promptly paid your orator, as is its right and privilege, discontinues the supply of gas to such customers, and that such is the only method by which your orator is enabled to avoid great loss, by reason of the failure or inability of many of the customers and consumers of your orator to pay the bills for the gas consumed by them; and in this connection your orator shows and charges the fact to be that if the city of Chicago should be permitted to begin prosecutions against your orator for the failure of your orator to comply with the terms of said ordinance, that thereupon a large number of customers and consumers of your orator would decline to pay your orator the price fixed by it as aforesaid, and being the net rate of one dollar per thousand cubic feet, and would refuse to pay any sum or sums whatsoever to your orator over and above the sum fixed by the city of

Chicago in said ordinance; and that if your orator should attempt to remove the meters in the houses of such customers or should attempt to discontinue the supply of gas to such customers, your orator would be immediately subjected to prosecutions and arrests on the part of the city of Chicago; that, if, on the other hand, your orator should permit the bills of said customers to run until the final determination of such suit or suits as the city of Chicago might bring against your orator for failure on the part of your orator to comply with the terms of the ordinance aforesaid, the outstanding bills of your orator would aggregate an enormous amount, which your orator is at present unable to calculate, and which it is impossible to calculate by any means whatsoever; and your orator shows that by means thereof and by reason of the financial irresponsibility of a large number of your orator's customers and consumers, your orator would be unable, in the event that it finally succeeded in defeating the prosecution or prosecutions brought against it by the city of Chicago, to collect from such customers and consumers the amount of such outstanding indebtedness; and thereby your orator shows unto the court and charges the fact to be that your orator would suffer enormous loss, the exact amount of which your orator is unable to calculate, and which your orator says it is impossible to calculate in any respect whatsoever, but which, in the opinion of your orator, would amount to many hundreds of thousands of dollars, and that the damage to your orator would be irreparable and incalculable.

550 XXXII.

Your orator further shows and states the fact to be, that if your orator should fail to comply with the terms of said ordinance, and should decline to furnish gas at the rate fixed therefor in said ordinance, but, on the contrary should continue to demand of its customers the rate which your orator has fixed as being the just, fair and proper rate for your orator to charge to said customers, that is to say, should continue to charge said customers $1 net per thousand cubic feet for gas sold and distributed to them, that then, under and by virtue of the terms of said ordinance, any customer of your orator in the city of Chicago could begin a prosecution against your orator for a violation of the terms and conditions of said ordinance; and your orator charges the fact to be that in the event of the failure of your orator to comply with the terms and conditions of said ordinance, many thousands of such suits will be started by the customers of your orator in the city of Chicago, in addition to such suits as the city of Chicago may see fit to start in attempting to enforce the provisions of said ordinance; and your orator shows unto the court that thereby, and by means thereof, your orator would be subjected to a multiplicity of suits; that it would be subjected to enormous expense in defending the same; that by reason thereof your orator would be unable to attend to its ordinary and legitimate business and affairs, pursuant to the privileges and powers conferred upon it in and by its charter from the People of the State of Illinois, and that the litigation arising therefrom would be endless, and the suits arising therefrom would be numberless And your orator charges

the fact to be that in the event of the failure of your orator to comply with the terms and conditions of said ordinance, the said city of Chicago will attempt to enforce the provisions of said ordinance, and to compel your orator to comply therewith. And your orator further charges that in pursuance of such efforts on the part of said city of Chicago to compel your orator to comply with the terms and conditions of said ordinance, said city of Chicago will begin, or cause to be begun, an enormous number of such suits, and will thereby harass and disturb your orator in the pursuit of its business aforesaid, and will make it impossible for your orator to conduct its business aforesaid in said city of Chicago because thereof. And your orator charges that it is unable to state the exact amount your orator would lose from even the temporary enforcement of said ordinance by the city of Chicago, but your orator charges it would be very largely in excess of two thousand dollars.

XXXIII.

And your orator further shows that the powers and privileges conferred upon your orator by the said charter to fix the rates for gas sold and distributed by your orator is a property right, and, as such, is protected by the Constitution of the United States and the laws thereof, and the provisions of said charter, wherein and whereby it is agreed by and between the People of the State of Illinois and your orator that the common council of the city of Chicago shall in
551 no case be authorized to compel your orator to furnish gas at a less rate than three dollars per thousand feet, is likewise a property right, and, as such, protected by the Constitution of the United States and the laws thereof.

XXXIV.

Your orator further shows that the passage of said ordinance and the enforcement thereof by the common council of the city of Chicago is and will be an attempt on the part of the said city of Chicago to reduce the price of gas manufactured, sold and distributed by your orator in and throughout the city of Chicago, in violation of the contract between your orator and the People of the State of Illinois, contained in its charter of incorporation, as hereinbefore set forth; and is a violation of the rights of your orator as guaranteed by the first clause of section 10 of article 1 of the Constitution of the United States of America, wherein and whereby it is provided that no State shall pass any law impairing the obligation of contracts; that it is a further violation of the rights of your orator as guaranteed to it by the fourteenth amendment to the Constitution of the United States of America, wherein and whereby it is provided that no State shall deprive any person of life, liberty or property without due process of law; and that the passage of said ordinance, and the enforcement thereof, by the city of Chicago is a further violation of the rights of your orator as guaranteed to it by the Constitution of the United States of America, and all amendments thereto, all of which constitutional guarantees this complainant invokes and relies upon.

Forasmuch, therefore, as your orator is without remedy save in a court of equity, where matters of this sort are properly cognizable and relievable, and to the end that the contract rights of your orator under its charter as aforesaid may be preserved, your orator prays that the City of Chicago may be made party defendant to this your orator's bill of complaint, and may be required to make full, true and direct answer to the same by a day certain to be fixed by the court, but not under oath, the answer of said defendant under oath being expressly waived; that upon final hearing hereof the said ordinance so passed by the city council of the city of Chicago on the fifteenth day of October, 1900, entitled "An ordinance regulating and fixing the price of gas in the city of Chicago," may be adjudged and decreed to be inoperative, invalid, illegal, null and void, and of no force and effect as against the People's Gas Light and Coke Company, and in violation of the contract rights of your orator contained in its charter as aforesaid, and that it may be adjudged and decreed that by said charter of the People's Gas Light and Coke Company the People of the State of Illinois agreed with the People's Gas Light and Coke Company that the common council of the city of Chicago should never be authorized to compel the People's Gas Light and Coke Company to furnish gas at a less rate than three dollars per thousand cubic feet, and that such contract is a valuable property right of the said People's Gas Light and Coke Company.

That upon the filing of this amended bill of complaint a
552 temporary restraining order may forthwith issue against the said defendant, The City of Chicago, restraining and enjoining the City of Chicago, its mayor, chief of police, city attorney, corporation counsel, and all other its officers, agents, servants and employés, and each, every and all of them, until the further order of the court, from in any way enforcing or attempting to enforce said ordinance adopted on October 15 1900, entitled "An ordinance regulating and fixing the price of gas in the city of Chicago," or any of the provisions thereof, against the People's Gas Light and Coke Company, or from in anywise interfering with the People's Gas Light and Coke Company or with the property or business of said People's Gas Light and Coke Company by the commencement of actions or otherwise, founded upon said ordinance of October 15, 1900, until the further order of the court herein, and that upon final hearing hereof the said injunction to be made perpetual; and that if at any time hereafter, and prior to the final hearing of said cause, any resident or residents, citizens or citizen, of the city of Chicago, consumers of gas or otherwise furnished by the People's Gas Light and Coke Company, shall enforce or attempt to enforce said ordinance passed by the city council of the city of Chicago on October 15th, 1900, or begin any prosecution thereunder in any of the courts of the State of Illinois, or take any steps or other proceedings thereunder, your orator may have leave forthwith to make such persons parties defendant to this your orator's bill of complaint, and that said persons and each of them may forthwith be enjoined and restrained as heretofore and herein prayed for by your orator in this bill of complaint, and that upon final hearing the injunction against such per-

son or persons may be made perpetual. And that your orator may have such other or further or different relief in the premises as the nature of the case may require.

And may it please your honors to grant unto your orator the People's writ of injunction, to be directed to the said City of Chicago, its mayor, chief of police, city attorney, corporation counsel, and all others, its officers, agents, servants and employés, restraining them and each of them as by your orator is heretofore and herein prayed.

And may it please your honors to grant the writ of summons in chancery, directed to the marshal of the northern district of the State of Illinois, northern division thereof, commanding him that he summons said defendant, The City of Chicago, to appear before this honorable court by a day certain to be fixed by the court, and then and there to answer this your orator's amended bill of complaint.

And your orator will ever pray, etc.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
By SEARS, MEAGHER & WHITNEY,
Its Solicitors.

JOHN W. GRIGGS,
W. F. SHEEHAN,
JAMES F. MEAGHER,
THOMAS A. MORAN,
Of Counsel.

553 STATE OF ILLINOIS, *County of Cook, ss:*

C. K. Wooster, being first duly sworn, on oath deposes and says that he is the vice-president of the People's Gas Light and Coke Company; that he has read the foregoing bill of complaint, and that the matters and things therein set forth are true of his own knowledge.

C. K. WOOSTER.

Subscribed and sworn to before me this fourth day of June, A. D. 1902.

[SEAL.] FRED L. BLACKINTON,
Notary Public.

(Endorsed:) Filed June 5, 1902, as of Jan'y 15, 1902 Marshall E. Sampsell, clerk.

And on to wit: the 6th day of June, 1902, came the City of Chicago by its solicitors Granville W. Browning and Charles M. Walker, corporation counsel, and filed in the clerk's office of said court in said entitled cause its certain demurrer to the amended bill in words and figures following to wit:

Demurrer to Amended Bill.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
THE CITY OF CHICAGO.

The demurrer of the defendant, The City of Chicago, to the complainant's amended bill of complaint.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's amended bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, does demur to the said amended bill, and for cause of demurrer, shows that the said complainant has not in and by its said amended bill, made or stated such a case as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for, from or against this defendant.

Therefore, and for divers other good causes of demurrer appearing in the said amended bill, this defendant does demur thereto, and prays the judgment of this honorable court, whether it shall be compelled to make any further or other answer to the said amended bill; and it humbly prays to be hence dismissed, with its
554 reasonable costs and charges in this behalf most wrongfully sustained.

GRANVILLE W. BROWNING,
Solicitor of the City of Chicago.

CHARLES M. WALKER,
Corporation Counsel.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
THE CITY OF CHICAGO.

I, Granville W. Browning, do hereby certify that I am the solicitor of record of the defendant, The City of Chicago, in the above-entitled cause, and do further certify that the foregoing demurrer to

complainant's amended bill of complaint is well founded in point of law.

GRANVILLE W. BROWNING.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
THE CITY OF CHICAGO.

Granville W. Browning, being first duly sworn, deposes and says that he represents The City of Chicago, defendant in the above-entitled cause, and that the foregoing demurrer of the said defendant is not interposed for delay.

GRANVILLE W. BROWNING.

Subscribed and sworn to before me, this 5th day of June, A. D. 1902.

VIRGINIA GUEST,
[SEAL.] *Notary Public.*

(Endorsed:) Filed June 6, 1902. Marshall E. Sampsell, clerk.

And on to wit: the 30th day of July, 1902, there was filed in the clerk's office of said court in said entitled cause a certain opinion in words and figures following to wit:

555 *Opinion.*

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO.

I have considered with great care the arguments, both oral and printed, submitted on the rehearing, and see nothing that ought to change the opinion already filed, or the order that followed.

The only serious question is whether, in view of the recent decision of the Supreme Court of the United States, in the Detroit traction case, the gas consolidation act of 1898 is to be held to embody a contract between the State and the complainant whereby, from that time forth gas was to be furnished by the complainant at a fixed rate unalterable by either party without the consent of the other. The language of the section relied on is as follows: "Such corporation (the consolidated corporation) shall not increase the price charged by it

for gas of the quality furnished to consumers during any part of the year immediately preceding such purchase or lease or such consolidation or merger." It is averred that such price for the "year immediately preceding" was not less than one dollar per thousand.

If this rate thus named in the act was meant as a maximum rate only, the Detroit case does not apply; if it was meant however, as an agreed fixed rate unalterable by either party, the decision does apply.

The Detroit case announced no new law. It is fundamental that no city or State can constitutionally enact any legislation that impairs the validity of existing contracts. The Detroit case merely held that under the legislation of Michigan the ordinance rate named, though in words a maximum rate only, must be regarded as an agreed fixed rate. The decision does not modify the previous decisions in the Illinois water cases where similar language in water ordinances *are* construed as maximum rates only. The question involved therefore, is not so much a question of constitutional law as a question of interpretation; namely, what was the legislative intent in the enactment of the gas consolidation act of 1898.

The act was not special—applying to complainant only. It applies to every gas company and to every city in the State. It contains no mandate, as in the Detroit case, that there shall be an agreed constant rate. It is preceded by no legislation looking to such constant rate. Its language,therefore, must be given its plain ordinary significance; and so construed I can see in it no purpose other than to fix, not a rate unalterable by either party, but a rate beyond which the consolidated companies may not go. To give it any other interpretation would be to import into the act a strained and artificial meaning.

556 I agree with counsel that neither city nor State must be allowed to run over plain contract rights. Against attempts of that kind the courts have always stood as a wall of defense. But it is equally important that no just right of the State should be impaired, nor a meaning put into its legislation that was not intended. When it comes to ascertaining what are the boundaries of the powers of the State, the courts must not forget that there are boundaries to their own powers as well.

The demurrer to the amended bill will be sustained and the bill dismissed for want of jurisdiction in this court over the cause of action set forth.

P. S. GROSSCUP.
Circuit Judge.

(Endorsed:) Filed July 30, 1902. Marshall E. Sampsell, clerk.

And on to wit: the 30th day of July, being one of the days of the regular July term of said court, 1902, in the record of proceedings thereof in said entitled cause, before the Hon. Christian C. Kohlsaat, by the direction of the Hon. Peter S. Grosscup, circuit judge, appears the following entry to wit:

Order of July 30, 1902, Sustaining Demurrer to Bill of Complaint as Amended.

25780.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO.

This matter coming on to be heard upon demurrer of the defendant to the amended bill of complaint herein, the court having heard argument of counsel, and being fully advised in the premises,

It is hereby ordered, adjudged and decreed, that said demurrer be and the same is hereby sustained; that said amended bill be and the same is hereby dismissed for want of jurisdiction at the cost of complainant, and that defendant have execution for said costs.

And thereupon the complainant enters its motion herein for an appeal to the Supreme Court of the United States, which is allowed, and the court fixes the amount of the appeal bond at the sum of six hundred thousand dollars to be filed within sixty days, which bond, when so filed and approved shall operate as a supersedeas.

And by agreement of the parties in open court it is stipulated by counsel for the defendant that pending said period of sixty days from this date the former restraining order entered herein on January 2, 1901, remain in force.

And afterwards, to wit: on the fifteenth day of September, A. D. 1902, the complainant, by its solicitors filed in said cause its petition for appeal to the Supreme Court of the United States with
557 its assignment of errors and appeal bond, respectively in words and figures following, to wit:—

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY, Complainant.
versus
CITY OF CHICAGO, Defendant.

The above-named complainant, The People's Gas Light and Coke Company, conceiving itself aggrieved by the order and decree made and entered in the above-named court in the above-entitled cause under date of July 30th, 1902, wherein and whereby, among other things, it was and is ordered and directed that the bill of complaint of the said complainant be dismissed for want of jurisdiction, does hereby appeal to the Supreme Court of the United States from said order and decree, for the reasons set forth in the assignment of errors which is filed herewith; and it prays that this its petition for its said appeal may be allowed, and that a transcript of the record, proceed-

ings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated September 12th, 1902.

SEARS, MEAGHER & WHITNEY,
Solicitors for The People's Gas Light and Coke Company, Complainant.

The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed.

Done this 15 day of Sep. 1902.

KOHLSAAT, *Judge.*

(Endorsed:) Filed Sep. 15, 1902, Marshall E. Sampsell, clerk.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY, Complainant,
vs.
CITY OF CHICAGO, Repondent.

Comes now the complainant and files the following assignment of errors, upon which it will rely its appeal from the decree made by this honorable court on the thirtieth day of July, 1902, in the above-entitled cause:

1. The United States circuit court, in and for the northern district of Illinois, northern division, erred in dismissing the complainant's amended bill of complaint in the above-entitled cause.

2. The court erred in dismissing said suit, and entering a
558 final decree therein in favor of the said City of Chicago, for its costs against said The People's Gas Light and Coke Company.

3. The court erred in dismissing the complainant's amended bill of complaint, in maner and form as shown by the record of said suit and proceedings.

4. The court erred in refusing to grant to complainant the relief asked and prayed for in and by said complainant's amended bill of complaint.

5. The court erred in refusing to enter a decree in favor of complainant, in accordance with the prayer of the amended bill of complaint.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the court, and prays that such disposition be made thereof as in accordance with the law and the statutes of the United States in such cases made and provided, and complainant prays a reversal of the decree of dismissal made and entered by said court, in said cause.

SEARS, MEAGHER & WHITNEY,
Solicitors for the People's Gas Light and Coke Company.

(Endorsed:) Filed Sep. 15, 1902. Marshall E. Sampsell, clerk.

Know all men by these presents, that we, The People's Gas Light and Coke Company, a corporation organized and existing under the laws of the State of Illinois, as principal, and Pacific Surety Company, of California, a corporation organized and existing under the laws of the State of California, and authorized to act as surety by the laws of the State of Illinois, as surety, are held and firmly bound unto the City of Chicago, in the full and just sum of six hundred thousand dollars ($600,000), lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, and our successors, assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this tenth day of September, in the year of our Lord, one thousand nine hundred and two.

Whereas, lately at a session of the circuit court of the United States, for the northern district of Illinois, northern division, in a suit pending in said court, between The People's Gas Light and Coke Company, complainant, and the City of Chicago, defendant, a decree was rendered dismissing the bill of complaint filed in said suit, for want of jurisdiction, and the said The People's Gas Light and Coke Company having obtained from said court an order allowing an appeal to the Supreme Court of the United States, to reverse the decree so rendered in the aforesaid suit; and a citation directed to the said City of Chicago is about to be issued, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty (30) days from the date hereof.

Now, the condition of the above obligation is such, that if the said The People's Gas Light and Coke Company shall prosecute its said appeal to effect, and answer all damages and costs that may be
559 awarded against it, if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
[SEAL.] By GEO. O. KNAPP, *Its President.*
Attest: L. A. WILEY, *Secretary.*

PACIFIC SURETY COMPANY OF CALIFORNIA,
[SEAL.] By STUART G. SHEPARD,
Resident Assistant Secretary.
Attest: ALLAN C. DURBOROW,
General Agent.

Approved: Sep. 15, 1902.

KOHLSAAT, *Judge.*

O. K.
GRANVILLE W. BROWNING,
Sol'r of the City of Chicago.

O. K.
MARSHALL E. SAMPSELL, *Clerk.*

(Endorsed:) Filed Sep. 15, 1902. Marshall E. Sampsell, clerk.

And on the same day, to wit: September 15, A. D. 1902, being one of the days of the regular July term of said court, 1902, in the record of proceedings thereof in said entitled cause, before the Hon. Christian C. Kohlsaat, district judge, appears the order allowing said appeal, as follows, to wit:

Order.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

MONDAY, *September* 15, 1902.

Present: Hon. Christian C. Kohlsaat, district judge.

25780.

THE PEOPLE'S GAS LIGHT & COKE COMPANY
vs.
THE CITY OF CHICAGO, ETC.

Now comes the complainant, by its solicitor, and files its petition for appeal to the Supreme Court of the United States, together with its assignments of error, and its appeal bond in the penalty of six hundred thousand dollars ($600,000.00) with the Pacific Surety Company of California as surety, and the complainant having now complied with the rules of said court and the order entered herein on July 30, 1902,

560 It is thereupon ordered that said appeal be and the same is hereby allowed to the Supreme Court of the United States and that a transcript of the record herein be transmitted to the clerk of said court within thirty days.

NORTHERN DISTRICT OF ILLINOIS, *Northern Division*, ss:

I, Marshall E. Sampsell, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court and made in accordance with præcipe filed in the cause entitled The People's Gas Light and Coke Company, complainant, *vs.* City of Chicago, as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district this 20th day of September A. D. 1902.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To the City of Chicago, Carter H. Harrison, mayor of the city of Chicago; Charles M. Walker, corporation counsel to the city of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an order allowing an appeal entered in the clerk's office of the circuit court of the United States, for the northern district of Illinois, northern division, wherein The People's Gas Light and Coke Company is complainant and appellant, and you are defendant and appellee, to show cause, if any there be, why the decree rendered against the said complainant and appellant, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Christian C. Kohlsaat, judge of the United States district court, in and for the northern district of Illinois, this 15th day of September, in the year of our Lord one thousand nine hundred and two.

KOHLSAAT, Judge.

Filed Sep. 20, 1902.

MARSHALL E. SAMPSELL, *Clerk.*

Service accepted for the City of Chicago.
GRANVILLE W. BROWNING,
Sol. for the City of Chicago.

561 UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

I hereby certify that I served the within citation on Granville W. Browning of the city of Chicago, Illinois, on the 17 day of September, 1902, at the city of Chicago, county of Cook, in the State of Illinois, by then and there delivering to the said Granville W. Browning, personally, a true copy of the within citation, which was done by order of att'y for appellant.

Dated at Chicago, in the State of Illinois, this 17th day of September, 1902.

One service	2.00
" mile	6
	$2.06

JOHN C. AMES,
United States Marshall,
By A. A. BACH, *Deputy.*

[Endorsed:] 2517. 25780. Supreme Court of the United States. The People's Gas Light and Coke Company *versus* City of Chicago. Citation to the Supreme Court of the United States.

Endorsed on cover: File No. 18,672. N. Illinois C. C. U. S. Term No. 444. The People's Gas Light and Coke Company, appellant, vs. The City of Chicago. Filed September 25", 1902.

561½ And on to-wit: the fifth day of December, being one of the days of the regular July term of said Court, 1903, in the record of proceedings of said Court in the cause entitled The Peoples Gas Light and Coke Company *vs.* City of Chicago, General No. 25780, appears before the Hon. Peter S. Grosscup, Circuit Judge the following entry to-wit:

25780.

THE PEOPLES GAS LIGHT AND COKE COMPANY
vs.
CITY OF CHICAGO.

On reading and filing the annexed consent and stipulation to the entry of this Order which is hereby made a part hereof, It is Ordered and Decreed that the final Order and Decree heretofore entered July 30, 1902 in the above entitled suit now pending on appeal to the Supreme Court of the United States, be and the same hereby is amended *nunc pro tunc* as of said July 30, 1902, so as to state the true decision of the Court by striking therefrom after the word "dismissed" the words, "for want of jurisdiction," and inserting in lieu thereof the words "upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the City Council under the laws of the State of Illinois" and that the record on Appeal be and the same hereby is amended accordingly, so that said appeal may be heard and decided on the Decree as now amended *nunc pro tunc*.

562 And to-wit: the thirtieth day of January, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, District Judge, appears the following entry to-wit:

Order of January 30, 1906.

26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO ET AL.

On motion of counsel for the defendant, The Peoples Gas Light & Coke Company, all parties being represented and no objection being made thereto, leave is hereby given said defendant to file an amended answer herein instanter.

563 And on to-wit: the thirtieth day of January, 1906, came The Peoples Gas Light and Coke Company by its solicitors, and by leave of Court first had and obtained filed in the clerk's

office of said Court in said entitled cause its certain Amended Answer in words and figures following to-wit:

564 *Amended Answer.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

Bill No. 26,796.

DARIUS O. MILLS, Complainant,
vs.
CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

Amended Answer of Defendant, The Peoples Gas Light and Coke Company, to the Amended Bill of Complaint Filed February 1, 1905, In the Above Entitled Cause.

This defendant, The Peoples Gas Light and Coke Company, by leave of court first had and obtained, makes this, its amended answer, to the amended bill of complaint filed February 1st, 1905, in the above entitled cause.

This defendant, saving and reserving unto itself all and all manner of benefit of advantage that can or may be had or taken to the many errors, uncertainties and imperfections of said amended bill of complaint, for answer thereunto, or unto such parts thereof as it is advised it is material or necessary for it to make answer unto, answering says:

I.

That it admits that it is a corporation duly organized and existing under and by virtue of a special act of the Legislature of the State of Illinois, approved February 12, 1855, as amended
565 by an act of the Legislature of said State approved February 7, 1865, with the powers, among others, as stated in clause or paragraph I of said amended bill of complaint.

II.

This defendant admits that after the passage of said act of February 12, 1855, and said amendatory act of February 7, 1865, this defendant acted on the privileges and powers therein contained, and duly accepted the same, and in reliance thereon, and with the consent of the City of Chicago, constructed and erected gas works and laid pipes in said city, for the distribution and delivery of gas to consumers thereof in said city, and to said City, as in said amended bill specified; and that the Common Council of the City of Chicago adopted, on August 30, 1855, an ordinance in the words and figures set out in paragraph or clause II of said amended bill of complaint.

III.

This defendant admits that, in pursuance of the privileges and powers granted in and by said charter, and in carrying out and performing the duties and obligations imposed thereby, this defendant invested many millions of dollars in erecting and constructing gas works, plants and appliances, and in laying down pipes, mains, feeders and appurtenances, to enable it to carry on the business of manufacturing and furnishing gas to consumers thereof throughout the City of Chicago, and that it has continuously, for upwards of forty years last past, remained, and is now engaged, in the business of manufacturing, selling and distributing gas by means of pipes, mains, feeders and appliances laid in the streets of said
566 city; and this defendant admits that it has invested its capital and funds in the development of its business in the city of Chicago, in real estate and personal property in said city of the value of upwards of twenty millions of dollars; that it has many buildings, factories, retorts and apparatus for the manufacture, sale and distribution of gas in said city, and in all parts and divisions thereof; that it owns, maintains and operates, at this time, upwards of two thousand miles of gas mains laid in the streets, alleys, avenues, highways and public squares of said city, and that it has upwards of four thousand miles of service pipes, and that it supplies gas to upwards of three hundred and fifty thousand consumers in said city, and that the authorized and outstanding shares of capital stock, and the issued and outstanding bonds of this company or for which it is liable are as stated in said amended bill; and this defendant admits that complainant was, at the time of filing said amended bill, the owner of upwards of ten thousand shares of the capital stock of this defendant, as stated in said amended bill, and is still the owner of upwards of eight thousand shares of said capital stock of the par or face value of one hundred dollars each.

IV.

This defendant admits that the rates and charges for gas manufactured by it from time to time to consumers thereof in the city of Chicago was and is substantially as stated in said amended bill.

This defendant further admits that the City of Chicago is, and for many years last past has been, a customer of this defendant, in the same sense, and in the same way, and under the same
567 conditions, as every other customer in said city, and that the bills of said city of Chicago, for gas manufactured and sold by the defendant during the years 1899 and 1900, were as stated in said amended bill.

V.

And this defendant admits that on or about the fifteenth day of October, 1900, the City Council of the City of Chicago, passed and adopted a certain ordinance in the words and figures set out in said amended bill in paragraph or clause V thereof, and admits that said ordinance was not afterwards vetoed, repealed, modified or amended by said City Council of the City of Chicago.

VI.

And this defendant alleges that it is advised by counsel, and so charges the fact to be, that the Legislature of the State of Illinois had not, at any time prior to the fifteenth day of October, 1900, authorized or empowered the Common Council of the City of Chicago to fix or regulate the prices to be charged by this defendant, or any other manufacturer, for gas furnished, supplied or sold by it or them as in said ordinance attempted, and this defendant charges that said ordinance was passed without authority under the laws of the State of Illinois, and that it is in all things null and void, and of no force and effect; and this defendant alleges that subsequent to the passage of said ordinance, and on or about the eighteenth day of May, 1905, the General Assembly of the State of Illinois attempted to enact a law to, among other things, confer upon
568 the City of Chicago power and authority to fix the rates and charges for the supply of gas for power, heating and lighting, furnished by any individual, company or corporation to said City of Chicago, and the inhabitants thereof, which act, by its terms, provided that the same should not be put in force until the question of its adoption should first have been submitted to the electors of said City of Chicago, and approved by a majority voting thereon; that thereafter, and on the seventh day of November, 1905, the question of the adoption of said act was attempted to be submitted to the electors of such city, but the official announcement of the result of such submission has not yet been declared. Said law, so attempted to be enacted by the General Assembly of the State of Illinois, by its terms is limited to the City of Chicago, and is the only enactment of the General Assembly of the State of Illinois, which directly or indirectly confers, or attempts to confer, power upon the City of Chicago, or the City Council thereof, to fix the rates and charges for the supply of gas for power, heating and lighting within said City of Chicago. But this defendant alleges it has been advised by counsel, and so charges the fact to be, that said act, approved May 18, 1905, is unconstitutional and void; that the General Assembly of the State of Illinois was without power to validly enact that the City of Chicago alone, of all the cities in the State of Illinois, should have power and authority to fix the rates and charges for gas for purposes of power, lighting and heating; that said act is obnoxious to Section 13 of Article IV of the Constitution of 1870 of the State of Illinois, which provides in substance that no act thereafter passed shall embrace more than one subject; and, on like advice of counsel, this defendant charges that the pretended adoption of said act, if
569 the proper authorities shall duly declare that the same was duly adopted by the electors of said City, is null and void, because, as said act is drawn, and was adopted by the General Assembly of the State of Illinois, the same embraces more than one subject, and as the said act was submitted to said electors for adoption, said electors were required to vote upon two propositions, without being given the right and privilege to vote upon either of said propositions, separately, to wit: The title to said act covers two distinct subjects: (*a*) Granting to the City of Chicago power and au-

thority to sell surplus electricity; and (*b*) granting to the City of Chicago the power and authority to fix the rates and charges for gas and electricity furnished by any person, company or corporation. The referendum clause of said act, for the submission of the question of the adoption of the same by the electors of the said City of Chicago (without which adoption said act was not to become a law) required the voter to vote Yes or No on two separate subjects, viz.: Whether the City of Chicago should be permitted to operate a municipal electric lighting plant for the purpose of selling electric light to private consumers, and, also, whether the City of Chicago should be authorized and empowered to fix the rates and charges by any person, company or corporation furnishing gas or electricity for purposes of power, lighting or heating, without permitting the voter to vote on either one of said propositions separately, or permitting a vote in the affirmative on one of said questions, and in the negative on the other thereof, but requiring an elector in order to cast a vote in favor of one of said questions which he might favor, to also cast a vote in favor of the other of said questions, although such elector might be utterly opposed to such other proposition; and for other reasons the attempted grant of power by said act of the General Assembly of the State of Illinois, approved May 18, 1905, was informal, invalid, unconstitutional and void. But this defendant al-
570 leges that the City Council of the City of Chicago has not as yet adopted any ordinance under the attempted authority conferred by said act of May 18, 1905.

VII.

And this defendant admits that the City of Chicago has repeatedly announced and threatened that it will proceed to enforce the said ordinance of October 15, 1900, against this defendant, and that it intends and threatens so to do, unless restrained by this Honorable Court, and also admits that numerous citizens of said city have refused to pay for gas except as in said ordinance provided, and have threatened to take steps against this defendant to enforce the terms and provisions of said ordinance of October 15, 1900, and the penalties therein provided.

VIII.

And this defendant admits that it has now upwards of 350,000 customers in the City of Chicago, in addition to the said City itself, to whom it is daily selling and distributing gas, and admits that, during the years 1900, 1901 and 1902, and up to the time of the filing of its answer, it sold and delivered gas to such consumers at the net rate of one dollar per thousand cubic feet, and in each year its sales aggregated many hundred millions of cubic feet of gas, as stated in said amended bill; and this defendant admits that many of its customers are people of small means, and financially irresponsible, that it renders to each of its customers monthly statements for gas consumed by them, and collects therefor as stated in said amended bill, and that this defendant, unless said bills are promptly paid, discontinues the supply of gas to such customers in accordance

with its rules and regulations in that behalf, and that such
571 method is the only one by which this defendant is able to avoid great loss by reason of the failure or inability of many of its customers to pay the bills for gas consumed by them; and this defendant admits that, if, pending the judicial determination of the validity of said ordinance of October 15, 1900, said ordinance shall nevertheless be enforced, or if the City of Chicago should nevertheless be permitted to begin prosecutions against this defendant for failure to comply with the terms of said ordinance, a large number of the customers of this defendant would decline to pay the price fixed by it as aforesaid, and would refuse to pay anything whatsoever over and above the sum fixed by said City in said ordinance; and this defendant admits that, if it should attempt to remove the meters in the houses of such customers and should attempt to discontinue the supply of gas to them, it would immediately be subject to thousands of prosecutions on the part of said City and, if this defendant should permit the bills of said customers to run until the final determination of such suit or suits as might be brought for failing to comply with the terms of said ordinance of October 15, 1900, the outstanding bills due and payable to this defendant would aggregate a very large sum of money; that by reason of the financial irresponsibility of a large number of said customers this defendant, in the event that said ordinance should be held to be void, would be unable to collect from such customers the amount of such outstanding indebtedness, and that thereby this defendant would suffer a loss aggregating a very large sum, the exact amount of which this defendant is unable to calculate, and which, in the opinion of this defendant, would be upwards of five millions of dollars.

572 IX.

And this defendant admits the allegations of said amended bill as contained in clause or paragraph IX. thereof.

X.

And this defendant admits the allegations of said amended bill as contained in clause or paragraph X. thereof.

XI.

This defendant admits that on or about the 16th day of December, 1902, said complainant addressed a communication to the board of directors of this defendant, requesting said board of directors to institute suit as alleged in clause or paragraph XI. of said amended bill, a copy of said communication being Exhibit C attached to said amended bill; that subsequently said complainant made like application to the stockholders of this defendant, in regular annual meeting assembled on February 10, 1903, as stated in said amended bill, and that this defendant, by its board of directors, and by a large majority of its stockholders, refused to comply with the request of said complainant to institute suit as by him requested.

XII.

Further answering, this defendant shows unto the Court, and states the facts to be that, in the month of September, 1900, public agitation for a reduction of the rates charged by this defendant, for gas sold by it, was inaugurated in the city of Chicago; that demand was made upon various public officials of the city of Chicago
573 and the State of Illinois, to institute proceedings at law and otherwise, against this defendant; that thereafter, the ordinance of October 15, 1900, was adopted by the City Council of the City of Chicago, which ordinance, by its terms, was to be in full force and effect from and after January 2, 1901; that on December 31, 1900, the original bill of this defendant against the City of Chicago was filed in the Circuit Court of the United States for the Northern District of Illinois, Northern Division, which case came on for hearing and was heard and argued on January 2 and 3, 1902; that in the course of said suit an amended bill of complaint was filed by this defendant; that an appeal was prayed by and allowed and perfected by this defendant from the decree of the Circuit Court of the United States to the Supreme Court of the United States, and the decision of said Supreme Court will be found in the 194 U. S. Reports at page 1. This defendant refers to the record of said suit in the Circuit and Supreme Courts of the United States for a statement of the allegations of the original and amended bills filed by this defendant therein, and for the decisions and judgments rendered in said cause, in all courts, with the like force and effect as if said allegations, decisions, and judgments were herein set out at length.

XIII.

This defendant, further answering, shows unto the Court that on August 9, 1901, Charles S. Deneen, as State's Attorney of Cook County, Illinois, filed a petition in the Circuit Court of said County for leave to file an information in the nature of *quo warranto*, which petition was thereupon by the Court granted. Said information alleged, among other things, that this defendant, contrary to
574 law, and in addition to the franchises of this defendant, was usurping, and continued to usurp, and use, without any legal warrant whatsoever, certain franchises and privileges in said information described, to the great damage and prejudice of the People of the State of Illinois, and against the peace and dignity of the same, whereupon the said State's Attorney, in the name and by authority of, and in behalf of, said People of the State of Illinois, prayed the consideration of the Circuit Court in the premises, and that this defendant might be summoned to answer by what warrant it used and claimed to have used and enjoyed the powers, franchises and privileges which it was alleged, in and by said information, it was using and usurping contrary to law. The purpose of said proceeding was to test the constitutionality of the act of the General Assembly of the State of Illinois, approved June 5, 1897, in force July 1, 1897, under authority of which act this defendant had acquired the property of certain other gas companies theretofore doing

iness in the city of Chicago, and being substantially the property
eribed in the amended bill filed by this defendant, as complainant
inst the City of Chicago, on June 6, 1902, *nunc pro tunc* as of
uary 15, 1902, in the Circuit Court of the United States for the
rthern District of Illinois, as hereinbefore stated Thereafter, such
ceedings were had in said *quo warranto* proceeding that by the
sideration of the Circuit Court of Cook County, said information
, on, to wit, October 28, 1901, dismissed, whereupon the said
te's Attorney appealed from the decision of said Circuit Court of
k County to the Supreme Court of the State of Illinois; and,
thereafter, and on October 27, 1903, by the consideration of
the Supreme Court of the State of Illinois, the judgment of
the Circuit Court of Cook County dismissing said *quo war-
to* proceedings, was in all things affirmed.

Subsequently, a petition for rehearing was filed in said Supreme
rt, which rehearing was denied on, to wit, December 11, 1903.
the opinion of the Supreme Court of the State of Illinois, in said
warranto proceedings, the Court held, among other things, that
l act was a constitutional and valid enactment of the General As-
bly of the State of Illinois, and while the general rule of law was
t the consolidation of several corporations into a new one invests
latter with all the rights and privileges of the several constituent
panies, such was not the result of consolidation and merger un-
the act in question, and that this defendant was not using any
er rights or privileges than those contained in and granted by the
rter of this defendant, being said act of the General Assembly of
State of Illinois, approved February 12, 1855, as amended by the
approved February 7, 1865.

XIV.

This defendant, further answering, shows unto the Court and
es the fact to be, that on or about December 16, 1902, it received
m said complainant a letter, being the same letter Exhibit C at-
hed to the amended bill of complaint filed in the above-entitled
se; that at a regular meeting of the board of directors of this de-
dant, held at the office of this defendant on January 29, 1903,
ich was the first meeting held by said board subsequent to the re-
pt of said letter, the President of this defendant stated to the
board that on receipt of said communication from complain-
ant, he had submitted the same to counsel to the company,
with directions to communicate to said board of directors, at
next meeting, counsel's opinion as to what action should be taken
this defendant on such request; that at said meeting, held Jan-
y 29, 1903, James F. Meagher, who then was and is now counsel
this company, was present, and advised said board of directors
t, while appreciating the force of complainant's position, never-
less, in the opinion of said counsel it would be impolitic, if not
prudent, for this defendant company to comply with the said re-
st of said complainant; that if this company were to commence
y litigation, such action might arouse prejudice against this de-
dant, and result in additional adverse action by the Common

Council of the City of Chicago against this defendant, and its business; that at said meeting, said counsel called attention to the fact that the then Mayor of the City of Chicago who was a candidate for re-election at the general municipal election to be held in April 1903, had stated, in effect, in a printed platform of principles then recently issued, to the citizens of the city of Chicago, on his behalf, that he (said Mayor) had reduced by twenty-five per cent. the price of gas to the City of Chicago, and to gas consumers in said city, and that he was, therefore, entitled to the favorable consideration of his fellow citizens, and to their suffrages at the coming election; said counsel further stated to said board, at said meeting, that it might be seriously injurious to the best interests of this defendant to have such a question agitated, which the institution of new litigation would tend to create. Thereupon, said counsel advised said board of directors, at said meeting, that the only safe course to pursue was to defer action until the Supreme Court of the United States should finally decide upon the merits of the case commenced by this defendant in the Circuit Court of the United States for the Northern District of Illinois, and then pending on appeal in the Supreme Court of the United States, as heretofore alleged; that after
577 a very full discussion of said matter, the following resolution was unanimously carried at said meeting:

"Resolved, that this Company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the Board of Directors of this Company, dated the sixteenth day of December, 1902, for the reason that this Board believes that for this Company to institute further legal proceedings to contest the legality of the ordinance adopted by the Common Council of the City of Chicago, October 15th, 1900, would excite public prejudice against this company, which at the present time it is deemed of great importance to avoid.

Be it Further Resolved, the Secretary be instructed to notify Mr. Mills of the action of this Board at this meeting, and send him a copy of this resolution."

That on the same day, the following communication was addressed by H. W. Olcott, the Assistant Secretary of this defendant, to said complainant:

"JANUARY 29, 1903.

D. O. Mills, Esq., 35 Wall Street, New York:

DEAR SIR: I beg to acknowledge receipt of your letter of December 16, 1902, which was submitted to the Board of Directors of the Company, and after conference with the counsel to the Company, the Board felt constrained under all the circumstances to decline to institute any further litigation at the present time, and their action was evidenced by the following resolution, which I am directed to communicate to you viz:

'Resolved, that this company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the Board of Directors of this company, dated the sixteenth day of December, 1902, for the reason that this board believes that for this company to institute further legal proceedings to contest the legality of the

ordinance adopted by the common council of the City of Chicago, October 15th, 1900, would excite public prejudice against this company, which at the present time it is deemed of great importance to avoid.

'Be it Further Resolved, the secretary be instructed to notify Mr. Mills of the action of this board, at this meeting, and send to him a copy of this resolution.'

Yours very truly,

H. W. OLCOTT,
Assistant Secretary."

578 XV.

And this defendant, further answering, shows unto the Court, and states the fact to be, that a regular annual meeting of the stockholders of this company was duly called and held at the office of this defendant on February 10, 1903, at eleven o'clock A. M.; that at said meeting there were present stockholders, in person or by proxy, representing 258,379 shares out of a total of 329,691 shares, of the issued and outstanding capital stock of this company; that at said annual meeting of stockholders the following proceedings were had and taken:

"Mr. R. R. Rogers, proxy for D. O. Mills, a stockholder of this company, thereupon offered the following preamble and resolution, and moved the adoption of the same:

"Whereas, heretofore, said D. O. Mills submitted to the board of directors of this company the following letter:

NEW YORK, *December 16th*, 1902.

To the Board of Directors of The Peoples Gas Light & Coke Co.:

DEAR SIRS: I believe you are aware that I am and for upwards of five years last past have been, the largest stockholder of The Peoples Gas Light & Coke Company, and of course, as such stockholder, I am vitally interested in the questions which have arisen under the ordinance of the Common Council of the City of Chicago, reducing the price to be charged for illuminating and fuel gas to seventy-five cents per thousand cubic feet. I have caused to be submitted to my counsel the proceedings in the suit instituted in the Circuit Court of the United States at Chicago, for the purpose of restraining the enforcement of this ordinance on the ground that it constituted an impairment of the obligation of the contract contained in our charter, together with a copy of the opinions of Judge Grosscup, and have informed such counsel that the case has been appealed to the Supreme Court of the United States, and will probably not be reached for argument until some time during the year 1904. I am advised by counsel that the interests of The Peoples Gas Light & Coke Company may not be adequately protected by the pending litigation for the following reasons:

First: That the bill in the pending suit was dismissed for want of jurisdiction in the Circuit Court of the United States for the Northern District of Illinois, and that in view of such disposition the Supreme Court of the United States may limit the point which it will consider on the present appeal to the naked question of jurisdiction.

Secondly: That the present suit does not involve any question
to the power of the Common Council of the City of Chicago to r
duce the charges of our company.

579 In view of the vital interest to all the stockholders of thes
questions, I hereby request that you will cause to be institute
at the earliest practical moment a new suit against the City of Ch
cago, or otherwise, for the purpose of preventing the enforcemer
of this ordinance, upon the ground that it impairs our charter co
tract, and that the common council had no power to pass it. Th
facts stated in the amended bill of complaint in the pending sui
I am advised fully show the necessity for a resort to equity for th
protection of our rights.

It seems to me that the importance of this matter to the compan
and its stockholders cannot be exaggerated. If the ordinance
valid, the revenue of the company will be decreased one quarter
the present gross income, and very much more than this of the n
income.

Yours very truly, D. O. MILLS.

And Whereas, in answer to such letter, the board of directors too
the action evidenced by the letter of the Assistant Secretary of thi
company to Mr. Mills, as follows:

JANUARY 29TH, 1903.

D. O. Mills, Esq., 35 Wall Street, New York:

DEAR SIR: I beg to acknowledge receipt of your letter of Decem
ber 16th, 1902, which was submitted to the board of directors of th
company, and after conference with the counsel to the company, th
board felt constrained under all the circumstances to decline t
institute any further litigation at the present time, and their actio
was evidenced by the following resolution, which I am directed t
communicate to you, viz:

'Resolved, that this company declines to accede to the request o
Mr. D. O. Mills, contained in his communication to the board o
directors of this company, dated the sixteenth day of December
1902, for the reason that this board believes that for this compan
to institute further legal proceedings to contest the legality of th
ordinance adopted by the common council of the City of Chicag
October 15th, 1900, would excite public prejudice against this com
pany, which at the present time it is deemed of great importance t
avoid.

'Be it Further Resolved, the secretary be instructed to notify M
Mills of the action of this board, at this meeting, and send to him
copy of this resolution.'

Yours very truly, H. W. OLCOTT,
Assistant Secretary.

Resolved, that the directors, and officers, of the company be in
structed and directed to comply with the request of Mr. D. O. Mills
and to institute legal proceedings against the City of Chicago, o
otherwise, for the purpose of restraining the enforcement of th
ordinance of October 15th, 1900, on the ground that it impairs ou

charter contract, and that the common council had no power to pass said ordinance.

The motion to adopt said preamble and resolution being seconded, was thereupon put by the chair, and lost, votes representing 21,995 shares, being the shares of the capital stock represented by the proxy of Mr. D. O. Mills, being cast in favor of the adoption of said resolution, and votes, representing 236,384 shares, being cast against the adoption of said resolution.

Thereupon the chairman declared that the motion of Mr. Rogers, as proxy for the said D. O. Mills, was not carried, and that the majority of the stockholders of this company has voted to refuse to comply with the request of said D. O. Mills, as embodied in said preamble and resolution."

580 XVI.

This defendant, further answering, shows unto the Court, and states the fact to be, that there was no collusion of any sort between the said complainant and this defendant in the commencement of the above entitled cause; that at the time of the receipt of said communication from complainant, dated December 16, 1902, the cause commenced by this defendant as complainant against the City of Chicago, was then pending in the Supreme Court of the United States, the transcript of the record in which cause had been filed in said Supreme Court on September 25, 1902. This defendant, in the original bill filed by it, on December 31st, 1900, had set up the contract which it believed was contained in its charter, being the act of the General Assembly of the State of Illinois, of February 12, 1855, as amended by the act approved February 7, 1865, and alleged the impairment of such contract by the adoption of said ordinance of October 15, 1900, and the acts threatened to be done under authority thereof, as set up and alleged in said bill; that such impairment was obnoxious to and prohibited by Section 10 of Article I of the Constitution of the United States of America; that said original bill also set up the want of power in the City of Chicago to validly enact said ordinance. The Circuit Court of the United States for the Northern District of Illinois, Northern Division, held on January 15, 1902, that the question of power of the City of Chicago to adopt said ordinance was one for the State courts to decide. The amended bill filed by this defendant in said cause on June 6, 1902, *nunc pro tunc* as of January 15, 1902, proceeded upon the theory of the charter of this defendant being a contract, the impairment of which, in the manner aforesaid, was prohibited by the Constitution of the United States as above alleged, and also alleged that the ordinance of the City Council of October 15, 1900, was passed arbitrarily, unlawfully and unwarrantably, as in said amended bill will fully appear; the judgment and decree of said Circuit Court of the United States, for the Northern District of Illinois, was that the demurrer to the amended bill be sustained, and that said amended bill
581 be, and the same was, dismissed for want of jurisdiction.

Contemporaneous with the pendency of said suit in the Circuit Court of the United States, the *quo warranto* proceeding insti-

tuted by the State's Attorney of Cook County, to test the constitutionality of the act of 1897, pursuant to which this defendant had acquired the properties of certain other gas companies as hereinbefore stated, was pending in the State courts of Illinois

The litigation to which this company was party had created a hostile sentiment to this defendant on the part of many of the citizens of the city of Chicago, and when the Circuit Court of Cook County dismissed said *quo warranto* proceeding, the comments in the press upon the action of the Court in that behalf were such that proceedings were thereafter had which resulted in certain employés and editorial writers of a newspaper being punished as for contempt of Court, although thereafter, the persons so punished were released by another branch of the Circuit Court of Cook County, all of which proceedings, however, tended to keep the question of the reduction of said rates prominently before the people of the City of Chicago, and to keep augmented and alive the feeling of hostility engendered against this defendant, which, however, had in a measure subsided at the time of the receipt of said letter of complainant in December, 1902.

It was in this situation of affairs, the counsel to this defendant advised the board of directors of this defendant, at said meeting held on January 29, 1903, that it would be impolitic and imprudent to comply with the request of said complainant, and commence another proceeding to test the validity of said ordinance of October 15, 1900, before the pending appeal to the Supreme Court of the United States, and the pending appeal in the *quo warranto* proceedings had been finally disposed of.

582 XVII.

This defendant, further answering, shows unto the Court, and charges the fact to be, that said counsel advised said board at said meeting, further, that the effect upon the pending suits, if this defendant should comply with the request of the said complainant as contained in said letter of December 16, 1902, of instituting a new suit raising the question of the power of the City of Chicago to validly enact said ordinance of October 15, 1900, might be very prejudicial; that, in his opinion, the judgment in the *quo warranto* proceedings would be affirmed, and the judgment in this defendant's suit on appeal to the Supreme Court of the United States would be reversed; that if a new suit were commenced, it was almost certain the point would be made and urged, on the argument of said cases in the Supreme Court of the State of Illinois, and the Supreme Court of the United States, either directly or indirectly, that this defendant had no faith in the contentions advanced in said proceedings, and said counsel so advised the board of directors of this defendant at said meeting, stating that, in his opinion, which opinion counsel stated to the board was concurred in by associate counsel Thomas A. Moran and Nathaniel C. Sears, after earnest consideration of the question, that in view of the pending litigation, and of the questions at issue in said suits, it was the duty of

said board of directors to refuse to comply with the request of complainant, as contained in said letter of December 16, 1902.

XVIII.

This defendant further answering, shows unto the Court that thereafter, and on or about January 25, 1904, the Circuit Court of the United States, for the Northern District of Illinois, Peter S. Grosscup Justice presiding, held on argument of the demurrer interposed by the City of Chicago to the amended bill of complaint filed in the above entitled cause, that the General Assembly had not delegated to the City of Chicago power and authority to validly
583 enact said ordinance of October 15, 1900, and that the said ordinance was of no effect, and was null and void, and issued an injunction restraining the enforcement of said ordinance by or on behalf of the City of Chicago, or of the customers of this defendant, and restraining this defendant from complying with said ordinance. The opinion of Justice Grosscup was filed in the Supreme Court of the United States prior to the decision of the case therein pending, brought by this defendant against the City of Chicago, and this defendant submits that the decision of Justice Grosscup, on the amended bill filed by complainant as aforesaid, in all probability had the effect of satisfying the Supreme Court of the United States in the decision reported in 194 U. S., page 1, that, in view of this suit, and the decision therein, there was no necessity for then deciding the question of power of the City Council, although duly raised and fully argued.

XIX.

And this defendant denies all and all manner of collusion, or of confederacy or conspiracy with the said Darius O. Mills, by means whereof said suit was instituted by the said Darius O. Mills; that said suit was so instituted without collusion of any sort between this defendant and the said Darius O. Mills; that this defendant, for the reasons hereinbefore set forth, refused to comply with the request of said complainant to institute said suit; whereupon the said Darius O. Mills commenced the said suit without the aid, connivance or collusion of this defendant in any manner whatever.

XX.

This defendant further answering shows unto the court that subsequent to the filing of the original bill of complaint in the above entitled cause, the decree of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, in the aforesaid suit brought by this defendant against the City of Chicago was affirmed on the appeal of this defendant, by the Supreme Court of the United States, as hereinbefore set forth, and that the judgment of said Circuit Court of Cook County, Illinois, in the *Quo Warranto*
584 proceedings aforesaid was affirmed on the appeal of the People of the State of Illinois, by the Supreme Court of Illinois, as hereinbefore set forth, and that by reason of the final disposition of the aforesaid appeal to the Supreme Court of the United

States and of the aforesaid appeal to the Supreme Court of Illinois, both of which said appeals were pending at the date of the filing of the original bill of complaint herein, the grounds for the original refusal of this defendant to institute further legal proceedings against the city of Chicago for the purpose of restraining the enforcement of said ordinance of October 15th, 1900, have ceased to exist and that it has, therefore, become and now is to the interest and advantage of this defendant, that the complainant in the above entitled cause shall prevail in the said cause, and that this defendant is advised by counsel that it would not be justified in instituting additional or independent litigation presenting the same question as that involved in the above entitled cause, during the pendency of said cause.

Wherefore, this defendant prays that the complainant may have the relief prayed by him in the amended bill of complaint in the above entitled cause.

THE PEOPLES GAS LIGHT AND
COKE COMPANY,
By C. K. WOOSTER,
Vice-President.

SEARS, MEAGHER & WHITNEY,
Solicitors and of Counsel for the Defendant,
The Peoples Gas Light and Coke Company.

(Endorsed): Filed Jan. 30, 1906. Marshall E. Sampsell, clerk.

585 And to-wit: the thirty-first day of January, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of January 31, 1906.

26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO ET AL.

Now come the parties by their solicitors and thereupon this cause is set down for final hearing on pleadings and proofs and the Court having heard the same and not being sufficiently advised in the premises takes time to consider.

586 And on to-wit: the twenty-third day of February, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Opinion by Judge Grosscup in words and figures following to-wit:

587 *Opinion.*

Circuit Court of the United States, Northern District of Illinois, Northern Division.

DARIUS O. MILLS, Complainant,
vs.
CITY OF CHICAGO and PEOPLE'S GAS LIGHT & COKE COMPANY.

GROSSCUP, *Circuit Judge:*

The bill is by a citizen of California, a stockholder of the People's Gas Light & Coke Company, suing in behalf of himself and other stockholders of the company similarly situated, against the City of Chicago and the Gas Company, citizens of Illinois; the object of the bill being to restrain the city from enforcing an ordinance forbidding manufacturers of gas from demanding or collecting from consumers of gas, more than seventy-five cents per thousand cubic feet, and attaching a penalty of from twenty-five to two hundred dollars for each violation thereof. The bill alleges that the ordinance is invalid, in that it impairs the obligation of a contract between the city and the company; and in that the council was without power from the state to pass a rate regulation ordinance. The bill also charges that notwithstanding the demand of complainant that the company institute, at the earliest practical moment, a suit against the city to prevent the enforcement of the ordinance—a former suit by the company, then pending on appeal in the Supreme Court, having been dismissed in the Circuit Court of the United States for want of jurisdiction—the company refused to institute such suit, giv-
588 ing as its reason that the institution of a new suit at that time, would excite public prejudice, which it was deemed of importance to avoid.

On demurrer to the bill, and motion for injunction, the court held that the bill exhibited a case wherein a stockholder might sue, the company declining to sue; and that the ordinance complained of was invalid for want of power in the city council from the state to regulate rates. Accordingly an injunction was issued. Thereupon the plea was interposed that the suit was collusive—that the stockholder had not brought his suit in good faith, to enforce his rights, and those of the other stockholders, but had brought it because of a collusive understanding between him and the Gas Company, based on the fact that by reason of his citizenship in the state of California, a suit by him would lie in the United States Courts, while a suit by the company would have been cognizable only in the state courts.

The considerations chiefly relied upon by the city in support of its contention is, that after the decree against the company by the United States Circuit Court had been affirmed by the Supreme Court, the officers of the company openly expressed their desire to see the complainant in this suit succeed; that counsel for the complainant in this case is the counsel who argued the company's case in the Supreme Court; that Mr. Brady, one of the stockholders and di-

rectors of the company, contributed to the complainant five thousand dollars toward the complainant's expenses in this suit; that the complainant, on his examination, admitted that the suit was brought to confer jurisdiction on the United States Court; and, gen-
589 erally, that the suit is in the interest of the gas company.

To sustain the charge of collusion, the evidence must show, either directly or inferentially, that there has been some agreement or understanding between the company and the complainant that the suit should be brought—that Mills was not acting for himself and the other stockholders alone, but was a channel through whom the company, with his acquiescence, was reaching out for a footing in the United States Courts. Was this the state of things between Mills and the company at the time the suit was brought?

The fact that the company is beneficially interested in Mills success, and was, as things have transpired, beneficially interested from the beginning, is not alone sufficient to show their understanding. A stockholder's suit, the company having refused, is always based upon the assumption that the company is interested, and ought, because of that interest, in its own name, to have brought the suit.

The fact that the same counsel was employed, by the company in its suit, and by Mills in his, is not alone sufficient to show collusion. Mr. Guthrie was not of counsel for the company when the Mills suit was brought, and it may very well have transpired that the desire of the company to employ him in the argument before the Supreme Court arose after the Mills suit had been brought. Nor is it to be held that because two clients employ the same counsel respecting the same general end, they are in agreement or collusion as to the means of bringing about the end.

The testimony relating to Mills admissions is inconclusive. It impresses one upon reading it, rather as a misunderstanding
590 of the question put, than as an admission of any agreement between Mills and the company; or any motive on his part, other than the lawful motive of bringing his suit in the court in which, under the constitution and laws of the United States, he is entitled to have it determined.

The evidence that the company, its officers and stockholders now openly wish Mills to succeed is not alone sufficient. Since the Mills suit was brought, the company's suit had been heard and affirmed by the Supreme Court of the United States. The company is without hope now of any relief through that suit. But that does not prove that at the time the Mills suit was brought, the company did not reasonably believe that the decree of the Circuit Court of the United States dismissing the bill would be reversed; and that the supplemental litigation demanded by Mills was unwise. The situation is changed; and with change of situation there naturally comes a change of views—a change that in no respect alters the fact of what the views were before the situation changed.

True, a chain of circumstances, each of which alone is insufficient to establish a given contention, may, together, indisputably prove that contention. But circumstantial evidence, to be conclusive from the mere fact of cumulation, must lead the judgment to this conclusion that, all the circumstances considered, there is no explanation

their existence except upon the existence of the fact sought to be
ven. That condition of things does not exist here. All the cir-
nstances considered, I can reasonably believe that Mills brought
s suit, not under an agreement with the company, but contrary
what the company then regarded to be its true interest; and that
bringing of the suit in the United States Court was not because
it was so planned between Mills and the company, but because
Mills, being entitled as a stockholder to bring his suit in some
court having jurisdiction of the subject matter, chose that
rt, that under the constitution and laws of the United States, was
ecially opened to the determination of suits between parties, one
whom was a resident of the state where the suit must be brought,
l the other a stranger.
Decree may be entered finding the issues in favor of the com-
inant and for an injunction as prayed.

(Endorsed). Filed Feb. 23, 1906. Marshall E. Sampsell, Clerk.

2 And on to-wit: the twenty-seventh day of February, 1906,
being one of the days of the regular December term of said
urt, 1905, in the record of proceedings thereof in said entitled
use before the Hon. Peter S. Grosscup, Circuit Judge, appears the
llowing entry to-wit:

Decree of February 27, 1906.

26,796.

DARIUS O. MILLS
vs.
HE CITY OF CHICAGO AND THE PEOPLE'S GAS LIGHT AND COKE COMPANY.

This cause came on to be heard at this term upon the pleadings,
roofs and exhibits filed therein and was argued by counsel, and
hereupon, it appearing that this is a suit of a civil nature in equity
here the matter in dispute exceeds, exclusive of interest and costs,
he sum or value of two thousand dollars, in which there is a con-
roversy between citizens of different states; and it appearing that
he requirements of equity rule 94 were duly complied with; that
he suit is not a collusive one to confer on a court of the United
tates jurisdiction of a cause of which it would not otherwise have
ognizance; that in October, 1900, the defendant City of Chicago
id not have power or authority under the laws of the state of Illi-
ois to pass the ordinance of October 15, 1900, set out in the bill,
hich ordinance provides, among other things, that no corporation,
ompany or companies, firm or persons manufacturing, selling,
supplying or distributing gas in the City of Chicago of il-
93 luminating or for fuel purpose shall charge, exact, demand
or collect from any consumer thereof more than the sum
f seventy-five cents per one thousand cubic feet of gas consumed

or used and that said ordinance is wholly null and void; that any attempt to enforce the said void ordinance would lead to a multiplicity of suits; that the complainant has no adequate remedy at law for the injury which would result from the threatened enforcement of said ordinance; that the injury which would be caused by such enforcement would be irreparable, and that the complainant is, therefore, entitled to an injunction against the enforcement of said ordinance, and the court having heard William D. Guthrie and I. K. Boyesen, Esqs., of counsel for complainant, Henry M. Ashton and David K. Tone, Esqs., of counsel for defendant the City of Chicago, and James F. Meagher, Esq., of counsel for defendant The People's Gas Light and Coke Company, and due consideration having been had, it is,

Ordered, Adjudged and Decreed that the ordinance passed and adopted by the City Council of the City of Chicago on or about the 15th day of October, 1900, set forth at length in the bill of complaint and admitted in the answer of the defendant City, is null and void on the ground that the said City Council at the time of the passage of the said ordinance had not been vested with power under the laws of the state of Illinois to fix or regulate the price of gas as in said ordinance attempted. It is further

Ordered, Adjudged and Decreed that the temporary injunction heretofore granted herein be made perpetual, and that a writ of injunction issue out of and under the seal of this court directed to the defendant The City of Chicago, its officers, agents, servants and employees, and any and every person acting under and by virtue
594 of the authority of said ordinance, perpetually restraining and enjoining them and each of them from in any way enforcing or attempting to enforce said ordinance or any of the provisions thereof against the defendant, The People's Gas Light and Coke Company, its officers, agents and employees, and likewise directed to said The People's Gas Light and Coke Company, its officers, agents and employees, perpetually restraining and enjoining them and each of them from complying with said ordinance, or any of the provisions thereof, and from submitting thereto. And it is further

Ordered, Adjudged and Decreed that the complainant, Darius O. Mills, recover of the defendant, The City of Chicago, his costs in this suit, to be taxed by the clerk.

595 And on to wit: the second day of March, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of March 2, 1906.

26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO, ET AL.

Now come the parties by the solicitors and the motion of the defendant, the City of Chicago, for an appeal to the Supreme Court of the United States and to the Circuit Court of Appeals for this Circuit is postponed for hearing until Tuesday next at two o'clock P. M.

596 And on to-wit: the sixth day of March, 1906, come the City of Chicago by its solicitors and filed in the clerk's office of said Court its certain Petition for Appeal in words and figures following to-wit:

Petition for Appeal.

Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Equity. No. 26796.

DARIUS O. MILLS, Complainant,
vs.
CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

To the Honorable Judges of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, in Equity Sitting:

Now comes the defendant above named, the City of Chicago, and respectfully represents that there is manifest error in this cause committed to the injury of this defendant, the City of Chicago, by the final decree pronounced in this cause on the 27th day of February, 1906, and by the interlocutory orders and decrees heretofore pronounced in this cause, in and by which said interlocutory orders and final decree this court assumed and asserted jurisdiction as a Circuit Court of the United States over this cause against this defendant; and this defendant shows that said Circuit Court erred in taking jurisdiction of the bill and in not dismissing the bill in this
597 cause for want of jurisdiction.

And this defendant prays that an appeal should be allowed from this court to the Supreme Court of the United States solely on the question of jurisdiction and that the question of the jurisdiction of the Circuit Court of the United States, for the Northern District of Illinois, Eastern Division thereof, as a Federal Court, in this cause, be certified to the Supreme Court of the United States

by this court; and the said defendant, the City of Chicago presents herewith its assignments or error and prays the court to certify the said question of jurisdiction.

JAMES HAMILTON LEWIS,
HENRY M. ASHTON,
DAVID K. TONE,
Solicitors for City of Chicago.

(Endorsed:) Filed Mar. 6, 1906. Marshall E. Sampsell, Clerk.

598 And on the same day to-wit: the sixth day of March, 1906, came the City of Chicago by its solicitors and filed in the clerk's office of said Court its certain assignment of errors in words and figures following to-wit:

Assignment of Errors.

Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Equity. No. 26796.

DARIUS O. MILLS, Complainant,
vs.
CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY, Defendants.

Assignments of Errors, of the Defendant City of Chicago, on Appeal to the Supreme Court of the United States.

The defendant, the City of Chicago, by its solicitors, shows that in the record and proceedings in the above entitled cause and in the decree made herein February 27th, 1906, manifest error has occurred, touching the jurisdiction of this court as a Circuit Court of the United States, to the prejudice of the defendant in the following particulars:

599 1. The court erred in failing and refusing to dismiss the bill of complaint in the above entitled cause for want of jurisdiction, because it appears from the face of the bill of complaint that said cause did not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court of the United States.

2. The court erred in not dismissing the bill of complaint in the above entitled cause because it appeared from the face of the bill of complaint that the Peoples Gas Light and Coke Company was improperly and collusively joined as a defendant in said cause for the purpose of creating a cause cognizable by the said Circuit Court in a case where jurisdiction would otherwise be wanting in said court.

3. The court erred in failing and refusing to dismiss said bill of complaint for the reason that it appeared from the face of said bill of complaint that the complainant Mills was improperly and col-

sively joined as a complainant in said cause for the purpose of reating a cause cognizable in the said Circuit Court of the United lates.

4. The court erred in not sustaining the demurrer of the defendnt, City of Chicago, in the above cause and in not dismissing comlainant's bill for the reason that it appeared from the face of said ill of complaint that Darius O. Mills, the complainant, was acting n collusion with and at the request of the defendant, the Peoples as Light and Coke Company, and the said defendant, the Peoples as Light and Coke Company was the real complainant in said cause nd that therefore said cause should have been dismissed for want f any diversity of citizenship.

5. The court erred in refusing and failing to dismiss said bill of omplaint for the reason that it appeared from the face of said bill of complaint that the Peoples Gas Light and Coke Company 00 and the City of Chicago were both citizens of and residents of the State of Illinois, and that Darius O. Mills, the comlainant, was acting collusively as the complainant at the request f and for the benefit of the defendant, the Peoples Gas Light and oke Company, and that therefore the controversy in this cause was holly between citizens and residents of the State of Illinois.

6. The court erred in entering the final decree in this cause on he 27th day of February 1906 and all interlocutory orders and ecrees prior thereto, because it appears from the records and proeedings in this cause that the controversy in this cause was wholly nd exclusively between the Peoples Gas Light and Coke Company nd the City of Chicago, and it further appears that both of said arties were at the time the bill of complaint in this cause was filed nd now are citizens and residents of the State of Illinois.

7. The court erred in failing and refusing to dismiss the bill of omplaint in this cause on the final hearing, for the reason that the vidence and the record in this cause show that this suit does not eally and substantially involve a dispute or controversy properly ithin the jurisdiction of the said Circuit Court of the United States, itting as a Federal Court.

8. The court erred in failing and refusing to dismiss the bill of omplaint in this cause on the final hearing, because it appeared rom the records in said cause that Darius O. Mills was improperly nd collusively made and joined as a complainant in this cause for he purpose of attempting to confer jurisdiction upon a Federal Court in a case where such jurisdiction would otherwise be wanting.

01 9. The court erred in failing and refusing to dismiss the bill of complaint in this cause on the final hearing, because t appeared from the evidence and record in this cause that the deendant, the Peoples Gas Light and Coke Company, was improperly nd collusively joined as a defendant in this cause, for the purpose f attempting to confer jurisdiction upon a Federal Court in a case here such jurisdiction would otherwise be wanting.

10. The court erred in failing and refusing to dismiss the bill of omplaint in this cause upon the final hearing, because it appeared rom the evidence and records in this cause that Darius O. Mills, the

complainant, filed this bill of complaint collusively and improperly at the request of and for the benefit of the Peoples Gas Light and Coke Company and that the said Peoples Gas Light and Coke Company was at all times the real complainant in this cause and that therefore this cause involved a controversy exclusively between the City of Chicago and the said Peoples Gas Light and Coke Company, both residents and citizens of the State of Illinois.

11. The court erred in its decree of February 27th 1906 in finding that the suit is not a collusive one to confer on a court of the United States jurisdiction of a cause, of which it would not otherwise have cognizance.

12. The court erred in its decree of February 27, 1906, in finding that in this cause there is a controversy between citizens of different States, but said court should have found that the controversy in this cause is wholly and exclusively between citizens of the same State and that there is no evidence in this record that at the time the bill of complaint in this cause was filed, there was any controversy between citizens of different States.

JAMES HAMILTON LEWIS,
HENRY M. ASHTON &
DAVID K. TONE,
Solicitors for the City of Chicago.

(Endorsed:) Filed Mar. 6, 1906. Marshall E. Sampsell, Clerk.

602 And on the same day to-wit: the sixth day of March, 1906, being one of the days of the regular December term of said Court, 1905, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of March 6, 1906, Allowing Appeal.

26796.

DARIUS O. MILLS
vs.
CITY OF CHICAGO and THE PEOPLES GAS LIGHT AND COKE COMPANY.

Now comes the defendant, the City of Chicago, and enters its motion for an appeal from the decree entered in this cause on the 27th day of February 1906 to the Supreme Court of the United States, in accordance with the petition for said appeal, this day filed, herein; and upon a consideration of said petition and upon a consideration of the assignments of errors of the said defendant, the City of Chicago:

It is hereby ordered that an appeal be and the same is hereby granted to the said City of Chicago in this cause to the Supreme Court of the United States, solely upon the question of the jurisdiction of this court sitting as a Circuit Court of the United States, to hear and determine this cause, between the parties to the bill as presented therein,

And it is further ordered that leave be and the same is hereby granted the said City of Chicago to present to this court for certification on said appeal, the record in this cause within thirty (30) days from this date and that the Bond on appeal be fixed at the sum of Five Hundred Dollars.

603 And on to-wit: the eleventh day of April, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Bond on Appeal in words and figures following to-wit:

604 Know all men by these presents, that we, City of Chicago, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Darius O. Mills, in the full and just sum of Five hundred dollars ($500.00) to be paid to the said Darius O. Mills, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this Ninth day of April in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a session of the Circuit Cpurt of the United States for the Northern District of Illinois, in a suit depending in said Court, between Darius O. Mills, complainant and Peoples Gas Light & Coke Company and City of Chicago, defendants a Decree was rendered against the said City of Chicago, defendant, and the said the City of Chicago, having obtained an appeal from said Court to reverse the Decree in the aforesaid suit, To the Supreme Court of the United States.

Now, the condition of the above obligation is such, That if the said City of Chicago shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full fore and virtue.

CITY OF CHICAGO. [SEAL.[
E. F. DUNNE, *Mayor.* [SEAL.]

[SEAL.] FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By ARTHUR C. ARNOLD,
Agent and Attorney in Fact.

Sealed and delivered in presence of—
—— ——.

Attest:
[SEAL.]
A. C. ANSON, *City Clerk.*

Approved by
MARSHALL E. SAMPSELL, *Clerk.*

Approved:
P. S. GROSSCUP.

(Endorsed:) Filed April 11, 1906, Marshall E. Sampsell, Clerk.

605 And on to-wit: the eleventh day of April, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Certificate in words and figures following to-wit:

606 *Certificate.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

In Chancery. No. 26796.

DARIUS O. MILLS, Complainant,
vs.
CITY OF CHICAGO and PEOPLE'S GAS LIGHT & COKE COMPANY,
Defendants.

In this cause I hereby certify that at the final hearing of this cause and at the time of the entry of the decree herein on to wit: the 27th day of February, 1906, the defendant, the City of Chicago, by its counsel, objected to the jurisdiction of this Court as a Circuit Court of the United States to hear and determine this cause and asked that this court dismiss this cause for want of jurisdiction as a Federal Court; that on the 6th day of March 1906 and after the entry of the final decree herein an appeal was prayed by the City of Chicago to the Supreme Court of the United States solely upon the question of the jurisdiction of this court as a Circuit Court of the United States, to hear and determine this cause and that the said City of Chicago filed its petition for said appeal and its assignment of errors on said appeal, and that on the said 6th day of March 1906 an appeal was granted by this court in this cause to the Supreme Court of the United States solely upon the question of jurisdiction.

607 And this court further certifies that on the 31st day of January 1906 this cause came on for a final hearing before this court and that the only evidence heard, received or considered by this court at any time on the question of the jurisdiction of this court to hear and determine this cause consisted of the following, to wit:—

The testimony of Richard R. Rogers, D. O. Mills, George O. Knapp, C. K. G. Billings, A. N. Brady, and James F. Meagher, taken before Hervey W. Booth, Special Examiner, in New York City, together with the Exhibits accompanying the depositions of said witnesses,

said testimony of said witnesses, together with said depositions having been filed with the Clerk of this Court on the 29th day of January 1906.

This court further certifies that the following portions of the record in this cause contain all the records of this court that have any reference to the jurisdiction of this court in this cause, and the Clerk of this court is directed to certify and transmit to the Supreme Court of the United States the following portions of the record in this cause on this appeal, to wit:—

1. Bill of complaint, filed June 8, 1903.
2. Demurrer of City of Chicago, filed July 6, 1903.
3. Order demurrer set for hearing on December 3, entered October 28, 1903.
4. Order, demurrer taken under advisement, entered December 5, 1903.
5. Opinion of Judge Grosscup, overruling demurrer, filed January 15, 1904.
6. Order, overruling demurrer, granting leave to City to withdraw demurrer, and answer, and order for injunction, entered February 15, 1904.
7. Order, extending time to withdraw demurrer and file answer, entered April 13, 1904.
8. Order, extending time to withdraw demurrer and file answer, entered April 23, 1904.
9. Order extending time to answer, entered May 2, 1904.
10. Order extending time to answer, entered May 10, 1904.
11. Answer of City of Chicago, filed May 11, 1904.
12. Order, extending time to file replication, entered June 3, 1904.
13. Replication, filed July 2, 1904.
14. Order, leave to withdraw replication and to file an amended bill, entered February 1, 1905.
15. Amended bill of complaint, filed February 1, 1905.
16. Affidavit of D. O. Mills, filed February 1, 1905.
17. Injunction Bond $200,000 filed by D. O. Mills February 11, 1905.
18. Demurrer of City of Chicago to Amended Bill, filed February 11, 1905.
19. Order, overruling demurrer to amended bill, granting leave to defendant to answer and granting an injunction, entered August 1, 1905.
20. Answer of City of Chicago to Amended Bill, filed August 19, 1905.
21. Replication, filed September 7, 1905.
22. Notice and affidavit of Henry M. Ashton, filed October 3, 1905.
23. Order, on motion for a rule on complainant to file an increased bond set for hearing October 10, entered October 3, 1905.
24. Order, motion of defendant for an increased bond set for hearing October 24, entered October 10, 1905.
25. Order, postponing hearing of motion for increased bond, entered October 24, 1905.
26. Order, continuing hearing of motion for increased bond, entered October 31, 1905.
27. Order, taking motion for increased bond under consideration, entered November 1, 1905.
28. Order allowing Peoples Gas Light and Coke Co. 20 days to file answer, entered November 1, 1905.
29. Order, complainant allowed 20 days to take proofs, fixing time of defendant and complainant in rebuttal, and reference to Hervey W. Booth, Special Examiner, to take proofs.

30. Order, overruling motion of City of Chicago for rule on complainant to file a further bond, entered November 10, 1905.
31. Order, extending time for complainant to take proofs ten days from November 21, entered November 20, 1905.
32. Order, extending time for Peoples Gas Light and Coke Co. to plead and amend bill, entered November 21, 1905.
33. Order, extending time for complainant to take proofs to December 7, entered November 24, 1905.
34. Answer of Peoples Gas Light and Coke Co. to Amended Bill, filed November 24, 1905.
35. Order, extending time to take proofs to December 12, 1905, entered December 5, 1905.
36. Affidavit of James F. Meagher, filed December 7, 1905.
37. Affidavit of Henry M. Ashton for City, filed December 7, 1905.
38. Affidavit of Edward F. Dunne, filed December 7, 1905.
39. Order, motion of Peoples Co. extending time of Complainant to close proofs 10 days from December 12, entered December 7, 1905.
40. Order, extending time for complainant to close proofs to January 4, 1906, entered December 20, 1905.
41. Affidavit of Henry M. Ashton, filed December 20, 1905.
42. Affidavit of David K. Tone, filed December 20, 1905.
43. Order, setting cause for hearing on January 31, 1906, entered January 16, 1906.

609 44. Testimony of Richard R. Rogers, D. O. Mills, George O. Knapp, C. K. G. Billings, A. N. Brady and James F. Meagher, and Exhibits, taken before Harvey W. Booth, Special Examiner, in New York, filed January 29, 1906.

45. Order giving the Peoples Gas Light and Coke Co. leave to file amended answer, entered January 30, 1906.
46. Amended Answer of the Peoples Gas Light and Coke Co. filed January 30, 1906.
47. Order, hearing said cause on pleadings and proofs and taking said cause under advisement, entered January 31, 1906.
48. Opinion of Judge Grosscup, filed February 23, 1906.
49. Decree of February 27, 1906.
50. Injunction entered February 27, 1906.
51. Order, motion of City, appeal postponed until March 6, 1906.
52. Petition for Appeal, filed March 6, 1906.
53. Assignment of Errors, filed March 6, 1906.
54. Order of March 6, 1906, allowing appeal.
55. Bond on Appeal.
56. Copy of this Certificate.

This court further certifies that Peter S. Grosscup, the Judge of this Court, by whom the final decree in this cause was entered, was absent from this judicial circuit since the 19th day of March 1906 and until the 9th day of April 1906, and that this certificate was presented in apt time.

For inasmuch as the above matters and things do not appear of record, the defendant, the City of Chicago, prays that the above

matters and things may be signed and sealed by this court and made part of the records of this cause, which is accordingly done this 11th day of April 1906.

PETER S. GROSSCUP.

(Endorsed:) Filed April 11, 1906, Marshall E. Sampsell, Clerk.

610 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court made in accordance with a certain Certificate filed in said Court in the cause entitled Darius O. Mills, Complainant *vs.* City of Chicago and Peoples Gas Light and Coke Company, Defendants, General No. 26,796, as the same appear from the original records and files of said Court now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 16th day of April, 1906.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

Endorsed on cover: File No. 20,245. N. Illinois C. C. U. S. Term No. 286. City of Chicago, appellant, *vs.* Darius O. Mills. Filed May 4th, 1906. File No. 20,245.

FILE COPY.

Office Supreme Court U. S.
FILED
AUG 13 1906
JAMES H. MCKENNEY
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 286

CITY OF CHICAGO,
Appellant,

vs.

D. O. MILLS and PEOPLES GAS LIGHT AND COKE COMPANY,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Motion to Advance and Set Down for Hearing.

JAMES HAMILTON LEWIS,
Corporation Counsel.

HENRY M. ASHTON AND
DAVID K. TONE,
Special Counsel.

GEO. HORNSTEIN CO., PRINTERS, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 286

CITY OF CHICAGO,
Appellant,

vs.

D. O. MILLS and PEOPLES GAS LIGHT AND COKE COMPANY,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Motion to Advance and Set Down for Hearing.

And now comes the City of Chicago, appellant in this cause, and moves the court that this cause be taken up out of its order upon the docket of this court and be advanced and set down for hearing on some particular day of this term, to be fixed by this court.

In support of said motion the said City of Chicago begs leave to submit to the court the following reasons:

First:—It appears from the record in this cause that the only question in issue in this cause is the question of the jurisdiction of the court below, and therefore, under Rule 32 of this court, this cause should be advanced on motion, and heard under the rules prescribed

by Rule 6 in regard to motions to dismiss writs of error and appeals.

Second:—It appears from the record in this cause that the City of Chicago was enjoined by the court below from enforcing an ordinance of the City of Chicago, fixing the price of gas to the inhabitants of the City of Chicago at the sum of seventy-five cents per thousand cubic feet; that said ordinance affects three hundred and fifty thousand consumers of gas within the City of Chicago and is a matter of vast public interest that should be speedily disposed of.

Third:—It appears from the record in this cause that one of the appellees in this cause, the Peoples Gas Light and Coke Company, has, from January 2, 1900, up to February 15, 1906. been collecting from consumers of gas within the City of Chicago the sum of one dollar per thousand cubic feet, in violation of the terms of said ordinance, and that the amount due to said consumers of gas, if said ordinance should be held valid, now amounts to over twelve million dollars, and that no bond or security of any kind has been given by the said company that is at all adequate or sufficient to protect said consumers in the event that said ordinance should be sustained.

CITY OF CHICAGO,
By JAMES HAMILTON LEWIS,
Its Corporation Counsel.
HENRY M. ASHTON and
DAVID K. TONE,
Its Special Counsel.

FILE COPY.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1900

No. 1000

[illegible]

vs.

[illegible]

[illegible] OFFICE AND PRODUCER GAS LIGHT AND POWER COMPANY,

Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

NOTICE OF MOTION TO ADVANCE AND SET DOWN FOR HEARING

JAMES HAMILTON LEWIS,

Solicitor for Appellee.

HENRY W. ARNOLD,

DAVID E. BONE,

Of Counsel.

Rule Supreme Court
FILED
OCT 9 1900
[illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 286

CITY OF CHICAGO,
Appellant,

vs.

D. O. MILLS and PEOPLES GAS LIGHT AND COKE COMPANY,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

NOTICE OF MOTION TO ADVANCE AND SET DOWN FOR HEARING.

To:

Guthrie, Cravath & Henderson,
and
Herrick, Allen, Boyeson & Martin,
Solicitors for D. O. Mills.

Sears, Meagher & Whitney,
Solicitors for Peoples Gas Light and Coke Co.

Please take notice that on Tuesday, the 9th day of October, A. D. 1906, we shall appear before the Supreme Court of the United States in the City of Washington, D. C., at the opening of court on

said day, or as soon thereafter as counsel can be heard, and move that the above entitled cause be taken up out of its order upon the docket of said court and advanced and set down for hearing upon some particular day of this term of said court, to be fixed by said court.

A copy of said motion, embodying the reasons in support thereof, is herewith handed you, which will be filed with the clerk of said court and used in lieu of a copy of a motion heretofore served upon you, to be heard on the same day.

JAMES HAMILTON LEWIS,
Corporation Counsel for
City of Chicago.

HENRY M. ASHTON and
DAVID K. TONE,
Solicitors for City of Chicago.

Received a copy of the above notice and of said motion this ..... day of October, A. D. 1906.

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JAMES H. McKENNEY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 286

CITY OF CHICAGO,
Appellant,

vs.

D. O. MILLS and PEOPLES GAS LIGHT AND COKE COMPANY,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Motion to Advance and Set Down for Hearing.

JAMES HAMILTON LEWIS,
Corporation Counsel.

HENRY M. ASHTON AND
DAVID K. TONE,
Special Counsel.

Geo. Hornstein Co., Printer, Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 286

CITY OF CHICAGO,
Appellant,

vs.

D. O. MILLS and PEOPLES GAS LIGHT AND COKE COMPANY,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Motion to Advance and Set Down for Hearing.

And now comes the City of Chicago, appellant in this cause, and moves the court that this cause be taken up out of its order upon the docket of this court and be advanced and set down for hearing on some particular day of this term, to be fixed by this court.

In support of said motion the said City of Chicago begs leave to submit to the court the following reasons:

First:—It appears from the records in this cause that the only question in issue in this cause is the question of the jurisdiction of the court below and

therefore, under Rule 32 of this court, this cause should be advanced on motion and heard under the rules prescribed by Rule 6 in regard to motions to dismiss writs of error and appeals. The order of the Circuit Court allowing the appeal in this cause was as follows (Transcript, 392):

> "It is hereby ordered that an appeal be and the same is hereby granted to the said City of Chicago in this cause, to the Supreme Court of the United States, solely upon the question of the jurisdiction of this court, sitting as a Circuit Court of the United States, to hear and determine this cause between the parties to the bill as presented therein."

The petition for an appeal (Transcript, 389) and the assignment of errors (Transcript, 390-392) related exclusively to the question of the jurisdiction of the court below.

Second:—It appears from the record in this cause that the City of Chicago was enjoined by the court below from enforcing an ordinance of the City of Chicago fixing the price of gas to inhabitants of the City of Chicago at the sum of seventy-five cents per thousand cubic feet (Transcript, 387-388); that said ordinance affects 300,000 consumers of gas within the City of Chicago (Transcript, 81 and 224), and is a matter of vast public interest and should be speedily disposed of.

Third:—It appears from the record in this cause that one of the appellees in this cause, the Peoples Gas Light and Coke Company, has, from January 2, 1900, up to February 15, 1906, been collecting from consumers of gas within the City of Chicago the sum of one dollar per thousand cubic feet in

violation of the terms of said ordinance, and that the amount due to said consumers of gas, if said ordinance should be held valid, now amounts to over twelve million dollars, and that no bond or security of any kind has been given by the said company that is at all adequate or sufficient to protect said consumers in the event that said ordinance should be sustained.

The above facts are fully set forth in the affidavit of Henry M. Ashton (Transcript, 108 to 111, inclusive).

CITY OF CHICAGO,

By JAMES HAMILTON LEWIS,
Its Corporation Counsel.

HENRY M. ASHTON and
DAVID K. TONE,
Its Special Counsel.

FILE COPY

Office Supreme Court, U. S.
FILED.
NOV 19 1906
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 226.

CITY OF CHICAGO,
Appellant,

vs.

DARIUS O. MILLS and PEOPLES GAS LIGHT & COKE COMPANY,
Appellees.

BRIEF AND ARGUMENT IN BEHALF OF APPELLANT.

JAMES HAMILTON LEWIS,
Corporation Counsel.

HENRY M. ASHTON AND
DAVID K. TONE,
Special Counsel.

Geo. Hornstein Co., Printer, Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 286.

CITY OF CHICAGO,
Appellant,

vs.

DARIUS O. MILLS and PEOPLES GAS LIGHT & COKE COMPANY,
Appellees.

BRIEF AND ARGUMENT IN BEHALF OF APPELLANT.

STATEMENT OF THE CASE.

On October 15, 1900, the City Council of the City of Chicago passed an ordinance providing that on and after January 2, 1901, no gas company doing business within the City of Chicago should charge to exceed the sum of 75 cents per thousand cubic feet for gas sold to consumers within said City or to the City of Chicago. (Rec., p. 78.)

At the time of the passage of the ordinance above described, the appellee, the Peoples Gas Light and

Coke Company, was charging to its consumers One Dollar per one thousand cubic feet for gas. (Rec., p. 78.)

On the 21st day of December, 1900, the Peoples Gas Light and Coke Company filed a bill in equity in the Circuit Court of the United States, for the Northern District of Illinois against the City of Chicago for the purpose of restraining said City from enforcing said ordinance. (Rec., p. 280.) Said bill of complaint charged that by virtue of the charter of the Peoples Company, granted to it by the legislature of the State of Illinois on the 12th of February, 1855, and as amended by the Act of February 7, 1865, and the acceptance of said charter, and the construction of its gas plant, the Peoples Company had entered into a contract with the State of Illinois, by the terms of which it should not be compelled to furnish gas to consumers at a less rate than Three Dollars per thousand cubic feet. (Rec., p. 283.) Copies of the legislative acts so relied upon were set forth in said bill of complaint. (Rec., pp. 280 and 281.) Said bill also charged (Rec., p. 290) that the legislature of the State of Illinois had not delegated to the City of Chicago the power to pass an ordinance regulating the price of gas and for that reason said ordinance was null and void.

On January 2, 1901, a restraining order was issued against the City of Chicago, enjoining it from enforcing the terms of said ordinance until the further order of the court.

On the 3rd day of January, 1902, the City of Chicago filed a general demurrer to said bill of complaint (Rec., p. 294), and on the 15th day of January, 1902, Judge Grosscup handed down an opin-

ion, sustaining said demurrer (Rec., p. 298). Judge Grosscup, in his opinion, held that a proper construction of the charter of the Peoples Company did not give the Peoples Company any immunity from regulation by the State of the price to be charged for gas, but on the contrary, the original charter, as well as the merger act of 1897, both recognized the right and power of the State to regulate gas rates. Judge Grosscup, in the above opinion, held that inasmuch as the alleged impairment of contract rights by the complainant had not been established, a federal court was without jurisdiction. He further held that even should it be conceded that the State of Illinois had not delegated to the City of Chicago the power to regulate the price of gas, that fact would not confer upon a federal court jurisdiction, for the Peoples Gas Light and Coke Company and the City of Chicago were both citizens and residents of the State of Illinois and it was the duty of the complainant to seek redress in the State courts for acts done by the City of Chicago in violation of State law. Speaking on this question, Judge Grosscup said (Rec., p. 301):

> "If I hold that, under existing legislation, the City has not been delegated with the State's power to regulate rates, it is manifest that the real and adequate reason for annulling the ordinance complained of would be, not any provision of the Federal Constitution, but this lack of power, as shown in the State legislation. On the other hand, if I should hold that the State's power had been delegated to the City, then, according to the reasoning already stated, the injunction prayed for would be refused. Whichever way one looks at this phase of the case, it turns, not on Federal Constitutional law, but

upon the interpretation of the State statutes, and is not, therefore, within the meaning of the judiciary act, a case involving the construction of the laws or the Constitution of the United States. If complainant's substantial remedy against the ordinance complained of is lack of power in the City, its relief must be found in the State courts."

An amended bill of complaint was filed, embodying substantially the allegations of said original bill, to which a demurrer was also filed, and on the 30th day of July, 1902 (Rec., p. 365), a decree was entered in the above cause dismissing the bill of complaint of the Peoples Company for want of jurisdiction and an appeal was allowed the Peoples Company to this court, said appeal to operate as a supersedeas, upon the defendant filing a bond in the sum of $600,000, and the restraining order then in force to be continued until the decision of said cause by this court. Said bond was duly filed on September 15, 1902. (Rec., p. 366.)

On the 5th day of December, 1903, an order was entered *nunc pro tunc* as of July 30, 1902, amending the final decree of July 30, 1902, in the above cause by striking out the words "dismissed for want of jurisdiction," and inserting in lieu thereof, "dismissed upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the City Council under the laws of the State of Illinois."

After the opinion of Judge Grosscup had been handed down, holding that the Peoples Company had no contract rights with the State of Illinois, and

that relief against the alleged want of power in the City to pass the ordinance in question "must be found in the State courts," the Peoples Company at once set about to circumvent that holding and obtain a footing in the Federal Court. It was discovered that D. O. Mills, a resident and citizen of the State of California, then living in New York City, and a friend of Anthony N. Brady, the vice president and a director of the Company, could be used for the purpose of filing such a bill.

Pursuant to said scheme, and on the 21st of January, 1903, D. O. Mills, the complainant in the case at bar, paid William D. Guthrie, his solicitor, the sum of $5,000 for the purpose of commencing a suit in the name of said Mills against the City of Chicago and the Peoples Company to restrain the City from enforcing the 75 cent gas ordinance, and said Peoples Company and its officers from complying with the same. (Print. Rec., p. 186; Orig., p. 328.)

On the 14th day of May, 1903, A. N. Brady, the vice-president and director of the Peoples Company, repaid to Mr. Mills the $5,000 check paid by Mr. Mills to Mr. Guthrie on January 21, 1903. (Rec., p. 186.) Less than a month thereafter and on June 8, 1903, the complainant, D. O. Mills, filed the original bill of complaint in the case at bar (Rec., p. 2), alleging that he was a resident and citizen of the State of California and that he brought the bill of complaint in behalf of himself and all the stockholders of the Peoples Company against the City of Chicago and said Company.

Said bill of complaint set forth the same legislative acts of February 12, 1855, and February 7, 1865 (Rec., pp. 2 and 3), under which the Peoples Com-

pany was incorporated, that were set out in the bill of the Peoples Company, and also alleged in the same way that the ordinance of October 15, 1900, impaired the obligations of the contract entered into between the State of Illinois and the Peoples Company, by virtue of the passage of said Acts, the acceptance of the same by the Peoples Company, and the erection of its plant pursuant thereto (Rec., p. 14; Orig., p. 24). Said bill also alleged in the same way that the Legislature of the State of Illinois had not delegated to the City Council of the City of Chicago the power to regulate the price of gas and that for that reason said ordinance was void. (Rec., p. 14; Orig., p. 24.)

The bill further recited (Rec., p. 16) the commencement of the bill of complaint of the Peoples Company against the City of Chicago on December 21, 1900, the decree of the Circuit Court of July 30, 1902, dismissing said bill, the appeal of the Peoples Company from that decree to this court, and the fact that pending said appeal, the said Circuit Court continued in force the preliminary injunction theretofore issued, until said case had been decided by this court. The bill further charged (Rec., p. 17) that on the 16th day of December, 1902, D. O. Mills, the complainant, addressed a letter to the Board of Directors of the Peoples Company, requesting them to institute a suit in the name of the corporation to contest the validity of said 75 cent gas ordinance. The bill further charged "that said board refused and still refuses so to do on the alleged ground that any further litigation with the City of Chicago than that already pending would be detrimental to the best interests of the Company."

The bill further charged that on February 10, 1903, a similar demand for the commencement of a suit was made upon the stockholders of the Peoples Company, and that said stockholders refused to bring said suit for the same reasons that had been previously assigned by the Board of Directors.

Said bill of complaint prayed that the City of Chicago might be enjoined from enforcing said ordinance of October 5, 1900, and that the Peoples Company and its officers and agents might be enjoined from complying with the provisions thereof. Before the application for a preliminary injunction in the suit of complainant Mills had been heard or considered by the court, and at least as early as July or August, 1903, William D. Guthrie, counsel for Mills the stockholder, was retained as counsel for the Peoples Company to argue in this court the appeal of that Company from the decree of said Circuit Court dismissing the Peoples Company's bill (Rec., p. 258).

On December 1, 1903, William D. Guthrie entered his appearance jointly with James F. Meagher, as solicitors for the Peoples Company in said case of the *Peoples Gas Light and Coke Company* v. *City of Chicago*, in this court. (Rec., p. 262.) On January 20, 1904, the case of the *Peoples Company* v. *The City of Chicago, supra*, was argued orally in this court by William D. Guthrie as counsel for complainant, and on April 4, 1904, this court handed down an opinion and judgment, affirming the judgment of the Circuit Court, holding that the ordinance of October 15, 1900, did not impair any contractual obligations between the City of Chicago and the Peoples Company and that therefore a Fed-

eral Court had no jurisdiction over said cause. *Peoples Gas Light and Coke Company* v. *City of Chicago,* 194 U. S., 1.

Four days after the appearance of William D. Guthrie jointly with James F. Meagher, as solicitors for the complainant, had been entered in this court, and on December 5, 1903, the application of complainant D. O. Mills for a preliminary injunction on the stockholders' bill came on for hearing before Judge Grosscup. (Rec., p. 259.) William D. Guthrie argued the motion for an injunction in behalf of the stockholder, D. O. Mills, and James F. Meagher, who was the associate of William D. Guthrie in the Peoples Company's case in this court at that very time, appeared in behalf of the Peoples Gas Light and Coke Company.

While William D. Guthrie and James F. Meagher were thus apparently engaged in a hostile conflict in the stockholders' suit, their relations when litigating the Peoples case as associate counsel before this court were amicable and friendly, for on the very day that the application for a preliminary injunction in behalf of Mills was argued, namely, December 5, 1903, an order was entered by stipulation of all parties, correcting the final decree of July 30, 1902, in the Peoples case, so as to have said decree read that said cause was dismissed "upon the merits as to the alleged contract rights of the complainant, *but without prejudice to any other suit in respect to the question of the power of the City Council under the laws of the State of Illinois.*"

It will be noted that the bill of the Peoples Company had been dismissed on July 30, 1902, for want of jurisdiction, and it was feared that that decree

might bar the prosecution of the stockholders' suit, based upon the want of power of the city council to pass the ordinance of December 13, 1900. This order and stipulation was signed and caused to be entered by Mr. Meagher and Mr. Guthrie for the purpose of paving the way for the stockholders' suit, so as to make it clear that the order of July 30, 1902, did not affect the right of Mr. Mills, the stockholder to bring another suit in behalf of the corporation to test the question of the want of power of the City to pass the ordinance in question.

To the original bill of complaint in the case at bar a demurrer was filed by the City of Chicago, and on January 24, 1904, the Circuit Court handed down an opinion and entered an order overruling the City's demurrer. (*D. O. Mills* v. *City of Chicago and Peoples Gas Light & Coke Company*, 127 Fed., 731.)

After the affirmance by this court of the decree of the Circuit Court, dismissing the bill of the Peoples Company, and on February 1, 1905, the complainant, D. O. Mills, by leave of court, filed an amended bill in this case. (Rec., p. 75.) It was upon this amended bill of complaint that this cause was heard and the final decree entered. Said amended bill of complaint omitted all allegations in reference to the impairment of the contract rights of the Peoples Gas Light and Coke Company by the passage of the ordinance of December 5, 1900, and based the complainant's right to relief solely upon the want of power in the City of Chicago to pass the ordinance in question. Said amended bill also alleged the affirmance by this court of the decree of the Circuit Court dismissing the bill of the Peoples Company

for want of jurisdiction, so far as the contract rights of the Peoples Company were concerned. (Rec., p. 82.) In other respects the amended bill was substantially the same as the original bill.

On the 11th of February, 1905, the City of Chicago filed a demurrer to the bill as amended. (Rec., p. 91.) And on August 1, 1905, the court overruled the demurrer to said amended bill. (Rec., p. 93.) On the 19th of August, 1905, the City of Chicago filed an answer to said amended bill (Rec., p. 94). Said answer alleged (Rec., p. 101) that the suit at bar was brought by the complainant, D. O. Mills, in pursuance of a collusive and unlawful scheme entered into between D. O. Mills and the Peoples Gas Light and Coke Company to wrongfully confer jurisdiction upon said Circuit Court; that ever since the passage of said ordinance of October 15, 1900, the complainant Mills and the defendant Gas Company have made every effort to defeat said ordinance, that there never has been a difference in the interests of, or any conflict between said directors and said complainant with reference to the attempts of all of said parties to defeat the ordinance of October 15, 1900; that the bill of complaint in this cause was filed because both the Peoples Company and the complainant Mills desired to keep this litigation out of the state court and to improperly and collusively confer jurisdiction upon a federal court. Further (Rec., p. 102), that there is no *bona fide* dispute between the complainant and the directors of his Company, but, on the contrary, this is a collusive attempt to make this court take jurisdiction of a question over which it has already decided it has no jurisdiction; that the refusal of the board of

directors to commence a suit, if they have so refused, is not *bona fide,* but is collusive, and that the demand of the complainant and the refusal of the directors is part of the scheme to secure a hearing of this cause of action in the United States courts.

On July 8, 1903, the appearance of the Peoples Gas Light and Coke Company was filed in this cause, but no demurrer, answer, or pleading of any kind was filed by the Peoples Company until November 24, 1905. It is important to note that although the directors of this corporation were charged with the failure to perform their duties in a matter which it is claimed was of the most vital importance, no statement of any kind was ever made, either admitting or denying the truth of complainant's charges until November 24, 1905. During that time no default was taken against the Peoples Company by the complainant Mills, but the complainant, Mills, and the defendant, the Peoples Company, seemed to have treated the entire proceeding as a friendly arrangement and to have regarded the City of Chicago as the only hostile antagonist. This is also established by the testimony of Mr. Meagher, counsel for the Peoples Company, for he says that when Mr. Mills' motion for an injunction was argued before Judge Grosscup on December 5, 1903, he did not say a word (Rec., p. 267), "but was absolutely neutral." (Rec., p. 268.)

On November 1, 1905, an order was entered (Rec., p. 113) providing for the taking of testimony in behalf of all the parties, before Hervey W. Booth, Master in Chancery, under Equity Rule 67, to be certified to the court for use on the trial.

On November 24, 1905, the defendant, the Peoples

Gas Light and Coke Company, filed an answer to complainant's bill (Rec., p. 117); said answer admitted that on the 16th day of December, 1902, the complainant Mills had written a letter to the Board of Directors, as alleged in the bill of complaint, demanding that a suit be instituted by the corporation against the City of Chicago for the purpose of contesting the power of said City to regulate the price of gas, and said answer alleged that at a director's meeting held on the 29th day of January, 1903, the demand of said complainant Mills was under consideration, and that James F. Meagher, counsel for the Peoples Company, then advised said Board of Directors that it would be impolitic and imprudent at that time to commence another suit against the City of Chicago, for the mayor of the City of Chicago, who was a candidate for re-election at an election, to be held in April, 1903, had inflamed the minds of the citizens of Chicago against said Peoples Company, and that the commencement of a new suit would tend to further inflame the public mind, and counsel advised said board that the only safe course to pursue was to defer action until the Supreme Court of the United States should finally decide upon the merits of the case commenced by this defendant in the Circuit Court of the United States, for the Northern District of Illinois, and then pending on appeal in the Supreme Court of the United States; and said answer alleged that the said Board of Directors acted upon the advice of said Meagher and refused, for the reasons above stated, to commence another suit, and so informed the complainant Mills, and that for the same reason the stockholders refused to comply with the demand

of said Mills when said matter was submitted to them. Said answer (Rec., p. 128) prayed that the defendant, Peoples Gas Light and Coke Company, "be hence dismissed with its reasonable costs in this behalf sustained."

On November 17, 1905, the deposition of D. O. Mills was taken before said Special Examiner, and he testified in behalf of the complainant that he went to Mr. Guthrie for information in reference to the Peoples Gas Light and Coke Company in the fall of 1902 (Rec., p. 165); that he, Mills, was under the impression at that time that Mr. Guthrie represented the Company; that the letter of December 16, 1902, was prepared by Mr. Guthrie (Rec., p. 166); and that Mr. Mills did nothing but sign it. He further testified (Rec., p. 168) that some time before the letter of December 16, 1902, was written they had decided to commence a suit. He testified that he did not remember who suggested the idea of commencing a suit, and further, "I remember having a conversation with somebody connected in some way with the Company in reference to the matter, but I could not tell who it was with."

On December 16, 1902, when Mr. Mills claims to have sent a letter to the directors of the Peoples Gas Light and Coke Company, demanding that a suit be instituted in the name of the corporation against the City of Chicago, to contest the validity of the 75 cent gas ordinance, the following persons constituted the directors: A. R. Flower, A. N. Brady, C. K. G. Billings, and G. O. Knapp. The office of the Peoples Company at that time was in the Central Trust Company's Bank on Wall Street. (Rec., p. 177.)

A. R. Flower was a brother of Gov. Flower of New York. Both of the brothers were intimate friends of Mr. Mills, and Mr. Mills met A. R. Flower very frequently. (Rec., p. 178.) Anthony N. Brady was also an intimate friend of complainant Mills and also resided in New York City and Mr. Mills also met him very frequently. (Rec., p. 179.) Yet Mr. Mills testified that he had never talked with either Mr. Knapp or Mr. Flower or any of the directors of the Company in reference to the commencement of this suit. Mr. Mills admits that although his own office was within a few blocks of the office of the Peoples Company he had not attempted to ascertain why the Board of Directors were unwilling to commence the suit demanded by him in the letter of December 16, 1902. It was not until January 29, 1903, that the Peoples Company answered the letter of Mr. Mills of December 16, 1902, urging upon the directors the imperative necessity of beginning another suit against the City of Chicago. When Mr. Mills was questioned if he did not think it strange that a business letter of the importance of the one sent to the Board of Directors had not even been acknowledged a month after it had been mailed, he replied (Rec., p. 183): "I did not think it very strange, I did not care about an answer. I did not regard it especially." The fact that Mr. Mills did not care about an answer and that he did not consult any of the directors who were on such intimate terms with him or go near the Company's office that was then within a stone's throw of him, would seem to indicate that the writing of the letter was a mere formality, mailed pursuant to a prearranged scheme between himself and the directors.

On January 21, 1903, according to his own evidence, he paid Mr. Guthrie, his lawyer, a fee of $5,000. (Rec., p. 186.) This money, according to his evidence was paid a week before he had received any reply from his communication to the Board of Directors and before he knew whether he would be required to begin a suit.

On May 14, 1903, Anthony N. Brady sent a check to the complainant, D. O. Mills, for $5,000, being in full of all moneys that D. O. Mills paid out for the expenses of this suit. (Rec., p. 189.) Mr. Mills said, concerning this $5,000 (Rec., p. 181): "Mr. Brady sent in to the office $5,000 without saying particularly what it was for, but I took it to be to assist in this case." Mr. Mills further testified that when he got this remittance from Mr. Brady, there was no letter or any explanation accompanying this check. (Rec., p. 182.)

Mr. Brady himself testified concerning this $5,000 check (Rec., p. 239) that he had no conversation with Mr. Mills about the matter, until after Mr. Mills' suit was brought; and Mr. Brady further testified (Rec., p. 240) that Mr. Mills suggested to him that $5,000 would be a satisfactory contribution. The minutes of the Board of Directors of the Peoples Company show that at a stockholders' meeting held at 35 Wall Street, New York, on January 29, 1903 (Rec., p. 276-277), Mr. Mills' letter of December 16, 1902, demanding that the Board of Directors institute another suit against the City of Chicago for the purpose of contesting the validity of the Seventy-Five Cent Gas Ordinance, was under consideration, and the minutes of said meeting further show (Rec., p. 279) that Mr. Brady, the Vice-Pres-

ident and Director of the Company, and the same person, who on May 14, 1903, repaid to Mr. Mills all the money that Mr. Mills had paid out for the expenses of the stockholders' suit, offered a resolution which was seconded by Mr. Flower, another friend of Mr. Mills, to the effect "that this Company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the Board of Directors of this Company, dated the 16th day of December, 1902, for the reason that this Board believes that for this Company to institute further legal proceedings to contest the legality of the ordinance adopted by the Common Council of the City of Chicago, October 15, 1900, would excite public prejudice against this Company, which at the present time it is deemed of great importance to avoid."

Mr. Brady further testified (Rec., p. 245) that his ideas in reference to the advisability of commencing further suits against the City of Chicago had not changed on the 14th day of May, 1903, when he gave Mr. Mills a check for $5,000 to be used for the purpose of commencing another suit. Here Mr. Brady's explanation was as follows: "I don't suppose my opinion changed at that time, but Mr. Mills had brought a suit, and wanted somebody to contribute to the expense."

This explanation that Mr. Brady was merely contributing to pay the expenses of the suit that had already been commenced, evidently does not explain for the bill of complaint was not filed by Mr. Mills until June 8, 1903.

Mr. Brady and Mr. Mills both testify that they never discussed the resolution proposed by Mr. Brady, and adopted at the Directors' meeting on

January 29, 1903, by the terms of which the Board of Directors refused to comply with the demands of Mr. Mills, and declined to institute any further suits against the City of Chicago.

Mr. Brady further testified (Rec., p. 248) that although he had never been served with the writ of injunction, yet he obeyed the injunction which compelled him to sell gas to the consumers of the City of Chicago at a dollar per thousand cubic feet, and which enjoined him from reducing the price to seventy-five cents. His willingness to obey this writ, even though he had not been served with a copy of it, may have been occasioned somewhat by the fact that he had contributed the entire expense that Mr. Mills had gone to in obtaining this injunction against himself, and it would be a waste of money as well as base ingratitude for a man to disobey an injunction which he himself had paid the expenses of inducing the court to grant against himself. Notwithstanding the overwhelming evidence of collusion and combination hereinbefore recited between Mr. Mills and his counsel, Mr. Guthrie, and the Peoples Company and its counsel, Mr. Meagher, yet the Peoples Company at all times prior to the final hearing of this cause, maintained an outward pretense of hostility. On November 24, 1905, the Peoples Company filed an answer, which denied that Mr. Mills, the stockholder, was entitled to relief or any part thereof prayed for by him, and which concluded as follows (Rec., p. 128): "And now having fully answered, this defendant prays to be hence dismissed with its costs in this behalf sustained."

Mr. Knapp, the President of the Company, was called to the stand on January 2, 1905, and in re-

sponse to questions propounded to him by Mr. Guthrie, he testified as to the number of consumers the Peoples Company had in the City of Chicago, the number of mains owned by it, and the method by which the Company's business was transacted. (Rec., pp. 198, 199, 200.) Upon cross-examination Mr. Knapp was asked if he was served with any subpoena to come to this hearing (Rec., pp. 214, 215), and replied "No, sir." He then stated that Mr. Meagher told him to come to the hearing; that Mr. Meagher and Mr. Billings and Mr. Knapp met at the Hoffman house on the day before their evidence was given before the Examiner; that Mr. Meagher went over all the evidence of these witnesses, and asked them the same questions that were afterwards propounded to them by Mr. Guthrie on the stand; that on the afternoon of the same day, Mr. Meagher, Mr. Billings and Mr. Knapp all went down to Mr. Guthrie's house, and there agreed on the line of testimony to be introduced on the next day before the Special Examiner. (Rec., p. 216.)

On the 7th day of December, 1905 (Rec., p. 129), counsel for the Peoples Gas Light and Coke Company moved that complainants' time for closing his proofs be extended. The City of Chicago opposed said motion. James F. Meagher, counsel for the Peoples Company, filed a long affidavit giving reasons why Mills, the complainant, should have further time in which to close his proof. Mr. Mills himself testified that his suit was brought for the purpose of conferring jurisdiction on a court of the United States of the case, of which it would not otherwise have cognizance (Rec., p. 164); that he understood at the time that such was the purpose

for which his bill of complaint was filed. After the testimony had been closed in this case, and especially after the president of the Company had himself testified that Mr. Meagher, counsel for the Peoples Company, had gathered up Mr. Mills' witnesses, and brought them to Guthrie's house, and gone over their evidence, it became evident even to counsel for Mr. Mills, that it was folly to keep up any further appearance of hostility between Mr. Mills and the Peoples Company. So on the 30th of January, 1906, a new theory was for the first time adopted by the Peoples Company and an amended answer was filed, the prayer of which was directly contrary to the prayer of the answer of the same Company filed November 24, 1905. Said answer concluded in the following language (Rec., p. 384): "Wherefore this defendant prays that the complainant may have the relief prayed by him in the amended bill of complaint in the above entitled cause." In other words, the Peoples Company prayed that it, and its officers and directors, might be enjoined by the complainant D. O. Mills, from reducing the price of gas to seventy-five cents.

Judge Grosscup, after considering the foregoing evidence, came to the conclusion, and held that there was no evidence of collusion between Mr. Mills and the officers and directors of the Peoples Company, and filed an opinion to that effect (Rec., p. 386), and therefore he entered a decree in conformity with the prayer of the complainant's bill of complaint.

On the 27th day of February, 1906, the Circuit Court entered a final decree in this cause (Rec., p. 388), enjoining the City of Chicago, its officers, agents, servants and employes and every person act-

ing under and by virtue of said ordinance from in any way attempting to enforce said ordinance against the defendants, the Peoples Gas Light and Coke Company, its officers and agents, and likewise enjoining the Peoples Gas Light and Coke Company, its officers and agents, from complying with said ordinance, or any of the provisions thereof.

In view of the evidence contained in the foregoing record, we think that that portion of the injunctional order restraining the Peoples Company from complying with the ordinance might safely have been left out, for, so long as the City of Chicago was enjoined from enforcing the ordinance, we do not believe there would be any likelihood that the officers of the Peoples Company would comply with it.

On the 6th day of March, 1906, the City of Chicago prayed an appeal from said decree (Rec., p. 389) to this court solely on the question of jurisdiction, which appeal was allowed. A certificate to the effect that this appeal was allowed solely on the question of jurisdiction was also filed (Rec., p. 394), and the assignments of errors filed in the court below (Rec., pp. 390-391) relate solely to the error of the Circuit Court in assuming jurisdiction of this cause in view of the facts disclosed by this record.

Specification of Errors.

(Rec., pp. 390, 391, 392.)

1. The court erred in failing and refusing to dismiss the bill of complaint in the above entitled cause for want of jurisdiction, because it appears from the face of the bill of complaint that said cause did not really and substantially involve a dispute or con-

troversy properly within the jurisdiction of said Circuit Court of the United States.

2. The court erred in not dismissing the bill of complaint in the above entitled cause because it appeared from the face of the bill of complaint that the Peoples Gas Light and Coke Company was improperly and collusively joined as a defendant in said cause for the purpose of creating a cause cognizable by the said Circuit Court in a case where jurisdiction would otherwise be wanting in said court.

3. The court erred in failing and refusing to dismiss said bill of complaint for the reason that it appeared from the face of said bill of complaint that the complainant Mills was improperly and collusively joined as a complainant in said cause for the purpose of creating a cause cognizable in the said Circuit Court of the United States.

4. The court erred in not sustaining the demurrer of the defendant, City of Chicago, in the above cause and in not dismissing complainant's bill for the reason that it appeared from the face of said bill of complainant that Darius O. Mills, the complainant, was acting in collusion with and at the request of the defendant, the Peoples Gas Light and Coke Company, and the said defendant, the Peoples Gas Light and Coke Company, was the real complainant in said cause and that therefore said cause should have been dismissed for want of any diversity of citizenship.

5. The court erred in refusing and failing to dismiss said bill of complaint for the reason that it appeared from the face of said bill of complaint

that the Peoples Gas Light and Coke Company and the City of Chicago were both citizens of and residents of the State of Illinois, and that Darius O. Mills, the complainant, was acting collusively as the complainant at the request of and for the benefit of the defendant, the Peoples Gas Light and Coke Company, and that therefore the controversy in this cause was wholly between citizens and residents of the State of Illinois.

6. The court erred in entering the final decree in this cause on the 27th day of February, 1906, and all interlocutory orders and decrees prior thereto, because it appears from the records and proceedings in this cause that the controversy in this cause was wholly and exclusively between the Peoples Gas Light and Coke Company and the City of Chicago, and it further appears that both of said parties were at the time the bill of complaint in this cause was filed and now are citizens and residents of the State of Illinois.

7. The court erred in failing and refusing to dismiss the bill of complaint in this cause on the final hearing, for the reason that the evidence and the record in this cause show that this suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of the said Circuit Court of the United States, sitting as a Federal Court.

8. The court erred in failing and refusing to dismiss the bill of complaint in this cause on the final hearing, because it appeared from the records in said cause that Darius O. Mills was improperly and collusively made and joined as a complainant in this

cause for the purpose of attempting to confer jurisdiction upon a Federal Court in a case where such jurisdiction would otherwise be wanting.

9. The court erred in failing and refusing to dismiss the bill of complaint in this cause on the final hearing, because it appeared from the evidence and record in this cause that the defendant, the Peoples Gas Light and Coke Company, was improperly and collusively joined as a defendant in this cause, for the purpose of attempting to confer jurisdiction upon a Federal Court in a case where such jurisdiction would otherwise be wanting.

10. The court erred in failing and refusing to dismiss the bill of complaint in this cause upon the final hearing, because it appeared from the evidence and records in this cause that Darius O. Mills, the complainant, filed this bill of complaint collusively and improperly at the request of and for the benefit of the Peoples Gas Light and Coke Company and that the said Peoples Gas Light and Coke Company was at all times the real complainant in this cause and that therefore this cause involved a controversy exclusively between the City of Chicago and the said Peoples Gas Light and Coke Company, both residents and citizens of the State of Illinois.

11. The court erred in its decree of February 27, 1906, in finding that the suit is not a collusive one to confer on a court of the United States jurisdiction of a cause, of which it would not otherwise have cognizance.

12. The court erred in its decree of February 27, 1906, in finding that in this cause there is a controversy between citizens of different states, but said

court should have found that the controversy in this cause is wholly and exclusively between citizens of the same state and that there is no evidence in this record that at the time the bill of complaint in this cause was filed, there was any controversy between citizens of different states.

ARGUMENT.

I.

The undisputed evidence in this record shows that this suit was collusively brought by Mr. Mills at the instigation of and for the benefit of the Peoples Gas Light and Coke Company, for the purpose of conferring jurisdiction upon a Federal Court in a case where such jurisdiction was otherwise wanting.

On December 21, 1900, the Peoples Company filed a bill in equity in the Circuit Court of the United States against the City of Chicago for the purpose of restraining said City from enforcing the 75 cent gas ordinance. (Rec., p. 280.) Said bill sought to obtain relief against the enforcement of said ordinance, upon two grounds—

First: It was alleged that the charter of the company, granted by the State of Illinois, and accepted by the company, constituted a contract which gave the company the right to charge One Dollar per thousand cubic feet, and that the ordinance in question impaired the obligation of that contract;

Second: It was alleged that the legislature had never delegated to the City of Chicago the power to regulate the price of gas.

Why was this bill filed in a Federal Court? An examination of the original bill of complaint of the Peoples Company would disclose to any lawyer that the only ground of federal jurisdiction there set out was the alleged impairment of the contract rights of the complainant. If that ground of jurisdiction should not be sustained, then the bill would have to be dismissed. A state court had unquestioned jurisdiction to litigate not only the alleged impairment of the contract rights of the Peoples Company, but had also jurisdiction to determine the alleged lack of power on the part of the City of Chicago to pass the ordinance in question.

The above facts establish two important propositions in this case:

First: That the Peoples Company was seeking to enjoin the enforcement of the ordinance in question, and

Second: That that company was unwilling to litigate that question in a state court, but wanted to raise the question in a Federal Court.

When it is sought to determine whether a suit is collusively brought for the purpose of conferring jurisdiction upon a Federal Court, the question of motive becomes an important one.

Here there was every motive for instituting a collusive suit for the conduct of the Peoples Company, and its officers and directors, prior to the filing of the bill of complaint by Mills, clearly demonstrated that

an unsuccessful effort had already been made by them to confer upon a Federal Court jurisdiction of the litigation in question.

Judge Grosscup, in his opinion, filed in the *Peoples* case on the 15th day of January, 1902, demonstrated very clearly that a Federal Court had no jurisdiction to pass upon the power of the City to pass the ordinance of October 15, 1900. Judge Grosscup, after pointing out that there was nothing in the contention that the contract rights of the Peoples Company were impaired by the ordinance in question, further held, that even if the City of Chicago lacked the power to regulate the price of gas, all litigation concerning that lack of power must be carried on in the state courts.

To quote Judge Grosscup's exact words (Rec., p. 302):

> "If complainant's substantial remedy against the ordinance complained of is lack of power in the City, its relief must be found in the state courts."

If the Peoples Company had been willing to litigate these questions in the state court, it would have been a very simple matter at that time for the Peoples Company to have dismissed its bill of complaint in the United States Court, and to have instituted a new suit in the state court, where the jurisdiction of that court to pass upon both questions raised by the Peoples Company was unquestioned.

The fact that the Peoples Company did not pursue that course, but even after the lack of jurisdiction in a Federal Court had been pointed out, that

company prosecuted an appeal from the judgment of Judge Grosscup to this court, demonstrated that the Peoples Company were unwilling to litigate the above questions in a state court; at least, that the company would not do so, until all efforts to get the matter into the Federal Court had been exhausted.

After the appeal of the Peoples Company to this court from the decree of the Circuit Court had been perfected, it became evident to the officers and directors of the People's Company that the decree of Judge Grosscup would be affirmed by this court, and that in a short time the Peoples Company would be driven to litigate both of the above questions in a state court.

The officers of the Peoples Company then resorted to the familiar scheme of procuring a stockholder to institute a suit in the Federal Court in his own behalf, and to have that stockholder make a sham demand upon the directors and stockholders of his corporation, and to have the directors and stockholders refuse to accede to such demand, pursuant to said prearranged scheme.

In casting about for such a stockholder, it was discovered that D. O. Mills, a resident and citizen of California, but then living in New York city, could be used for such a purpose. Mr. Mills was a friend and business associate of Anthony N. Brady, the vice-president and a director of the Peoples Company. (Rec., p. 178.) He was also an intimate friend and business associate of A. R. Flower, another director and large stockholder in the Peoples Company. (Rec., p. 179.)

Mr. Mills, while perfectly willing to permit his

name to be used as stockholder, for the purpose of bringing suit, was not willing to pay the expenses of the litigation. That expense should be borne by the corporation. The plan outlined was to have Mr. Mills pay the attorney's fee to Mr. Guthrie in the first instance, and then have Mr. Brady, the vice-president and manager of the corporation in New York city, refund the expense to Mr. Mills. Mr. Brady, of course, did not intend to pay out of his own pocket $5,000 for the benefit of all the stockholders of the Peoples Company. When Mr. Brady paid this money he undoubtedly foresaw that after the litigation was over it would be discovered by the officers and directors of the company that Mr. Brady had conferred a benefit upon the corporation by contributing this $5,000, and after the litigation had closed, and the danger of exposing the contents of the corporate books had ceased, it would be an easy matter to have the Board of Directors repay Mr. Brady the $5,000. The above plan was simple, direct and it was thought that it could be carried out without any fear of detection.

Pursuant to the above arrangement, and on the 21st day of January, 1903, D. O. Mills, the complainant, paid to William D. Guthrie, his solicitor, the sum of $5,000, said money to be used for the purpose of commencing a suit in the name of said Mills against the City of Chicago, and the Peoples Company, to restrain the said City and the said company from enforcing the seventy-five cent gas ordinance. (Rec., p. 186; orig., 328.)

On the 14th day of May, 1903, Anthony N. Brady, the vice-president and director of the Peoples Company, refunded to Mr. Mills the $5,000 previously

paid by Mr. Mills to Guthrie. (Rec., p. 186.) A few weeks thereafter, and on June 8, 1903, the complainant Mills filed the original bill of complaint in this cause against the City of Chicago and the Peoples Company.

It will thus appear that before Mr. Mills had even instituted his suit for the purpose of contesting the seventy-five cent gas ordinance, he had already been repaid by the vice-president of the company every dollar that was ever expended by him in this litigation. It was evident that Mr. Mills did not propose to take any chances, but wanted this suit to be financed exclusively by the officers of the Peoples Company.

Of course, we have no means of knowing, except from Mr. Mills' own evidence, whether Mr. Mills paid Mr. Guthrie the $5,000 on January 21, 1903. It is possible that that $5,000 was paid after Brady had paid the money to Mr. Mills; but, assuming the evidence of Mr. Mills to be true, it does not place the conduct of the officers of this company and Mr. Mills in any more favorable light.

Mr. Mills claims to have written a letter on December 16, 1902, addressed to the Peoples Company, requesting the Board of Directors of that company to institute another suit against the City of Chicago for the purpose of contesting the seventy-five cent gas ordinance. A copy of this alleged letter is set forth in the record. (Rec., p. 277.) It was claimed on the trial that the original letter had been lost by the Peoples Company. No attempt was made to explain how a document of such importance could have disappeared from the company's files, and the absence of the letter itself would tend to

show that no such letter was ever mailed or written, but an alleged copy was made up for the purposes of this suit.

Who was Mr. Mills' lawyer in the suit filed on the 8th of June, 1903? William D. Guthrie.

According to complainant's evidence, in August, 1903, and before any injunction had been asked for or granted in the Mills suit, the same Mr. Guthrie was retained to represent the company. Mr. Guthrie and Mr. Meagher both appeared as counsel for the company in this court in the prosecution of the Peoples Company's suit, and yet, while Mr. Meagher and Mr. Guthrie were thus co-operating jointly for the purpose of obtaining relief on the company's bill in this court, Mr. Guthrie was conducting a sham suit in the Circuit Court in the name of Mr. Mills and against the Peoples Company and was seeking to enjoin the Peoples Company in this suit from doing the very things that Mr. Guthrie and Mr. Meagher were both in this court contending the Peoples Company had a right to do and wanted to do.

The above circumstances alone are sufficient within the authorities hereinafter quoted to require the dismissal of this suit, as collusive. Equity Rule 94 provides that whenever a bill is brought by a stockholder in a Federal Court, seeking to obtain relief because the corporation has refused to act, the stockholder must show, among other things, that his suit is instituted in good faith and without collusion with the corporation for the purpose of conferring jurisdiction upon a Federal Court in a case where such jurisdiction is wanting.

Now, under the above rule, the burden was upon

the complainant in this case to show that the bill was filed without collusion and in good faith. The complainant placed upon the stand a number of witnesses in an attempt to prove the above facts, but those witnesses not only failed to show that there was no collusion, but their evidence clearly and conclusively established the fact that the Mills suit was fraudulent and collusive and instituted by Mr. Mills as a mere stool-pigeon for the purpose of protecting the corporate interests and with the co-operation and connivance of the directors and attorneys of the Peoples Company.

Mr. Mills testified (Rec., p. 165) that when he went to Mr. Guthrie in the fall of 1902, his impression was that Mr. Guthrie represented the company. He thinks he signed a letter, but he had nothing to do with the composition of it and knew nothing about it except that it was presented to him by Mr. Guthrie. He further testified (Rec., p. 167):

> "Q. Now, when did you next see him, how long after the next interview? A. I think the next interview would be probably when it was decided to commence my suit.
>
> "Q. Your suit? And when was that? A. That would be some time in 1902."

In other words, Mr. Mills admits that in the latter part of 1902 Mr. Guthrie and himself had decided to commence the Mills suit. In the face of the fact that they had decided to commence a suit at that time, they went through a sham performance of requesting the Board of Directors to take action. It is claimed that the letter of December 16, 1902, was then written and mailed to the company's office at Chicago. Mr. Mills admits that he was

an intimate friend of Mr. Brady and Mr. Flower, the leading members of the Board of Directors, that they resided in New York, that the Gas Company's office in New York city was within a short distance of his own, and yet Mr. Mills says that he never talked with any of the officers or stockholders about the commencement of this suit. Those circumstances alone show that the writing of the letter was a mere pretense. No attempt was made by Mr. Mills to induce any of the officers or directors of this company to act in the way he pretended he wanted them to act. It was not until January 29, 1903, that the Board of Directors passed a resolution refusing to comply with Mr. Mills' request that a suit be instituted by the company. Yet on January 21, 1903, and before the directors had acted and before Mr. Mills had received any information from any source on the question as to whether or not the directors would act, Mr. Mills testified (Rec., 186) that he retained Mr. Guthrie on that day and paid him a fee of $5,000. An attempt is made to explain away this most damaging piece of evidence by saying that Mr. Meagher and Mr. Guthrie had consultations during this period and that Mr. Guthrie had ascertained that Mr. Meagher differed with him about the commencement of this suit. The conclusive answer to that proposition is that Mr. Mills testified (Rec., 184) that he had not talked to any of the directors or officers of the company and that Mr. Guthrie, his own lawyer, had not informed him why Mr. Mills' letter of December 16, 1902, was not answered. The fact that Mr. Mills was the mere stool-pigeon for the corporation and that no answer was expected is made clear by his own testimony.

He says (Rec., 183), in answer to the question as to whether he did not think it strange that no answer was received within a month to so important a communication: *"I did not think it very strange. I did not care about an answer. I did not regard it especially."* The letter upon its face states that it was a matter of urgent necessity. Mr. Mills admits that when he wrote it he did not care about an answer. And why? Because, as he had previously testified, he had already decided to commence a suit and had already retained Mr. Guthrie as his counsel.

On January 29, 1903, this letter of Mr. Mills of December 16, 1902, which purported upon its face to be a matter of great importance, but which Mr. Mills frankly admitted he did not expect to be answered, was presented to the Board of Directors. Mr. Mills' proposition that the corporation begin another suit to contest the validity of the 75 cent gas ordinance was voted down.

> "The matter was discussed at length and the following resolution offered by Mr. Brady, seconded by Mr. Flower, on being put by the chair was carried unanimously (Rec., p. 279):
>
> "Resolved, that this company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the Board of Directors of this company, dated the 16th day of December, 1902, for the reason that this Board believes that for this company to institute further legal proceedings to contest the legality of the ordinance adopted by the common council of the City of Chicago October 15, 1900, 'would excite public prejudice against this company, which at the present time it is deemed of great importance to avoid.'"

The resolution that no such suit be commenced was proposed by Anthony N. Brady, the vice-president of the company, and the intimate friend of Mr. Mills, and was second by A. R. Flower, a New York stock broker, a brother of ex-Governor Flower, and also an intimate friend of Mr. Mills.

Mr. Mills further testified that on May 14, 1903, he received a check from Mr. Brady, the vice-president of the company, for $5,000. This check, Mr. Mills testified, came to his office without any letter or explanation. (Rec., p. 182.)

> "Q. And was there any letter inside of it at all? A. No, sir.
>
> "Q. Nothing of any kind which would be of explanation? A. No, sir.
>
> "Q. Just this check for $5,000? A. Yes, sir."

And further (Rec., p. 186):

> "Q. When did you receive the $5,000 check from Mr. Brady? A. May 14, 1903, check, A. N. Brady, $5,000.
>
> "Q. And when did you pay Mr. Guthrie the $5,000 fee? A. The 21st of January, 1903.
>
> "Q. Did you have any talk with Mr. Brady about this suit before you received this check of $5,000 from him? A. I don't know that I did."

Bearing in mind now that Mr. Mills' suit was not commenced until June 8, 1903, we have here the following startling condition of affairs: On January 29, 1903, Mr. Brady, the vice-president of the company, offers a resolution denying Mr. Mills' request to begin any further action against the City of Chicago. Mr. Mills, we are told, decides to go ahead and fight the directors and officers of the company.

On May 14, 1903, nearly a month before Mr. Mills'

suit is filed against the directors and officers of the company, Mr. Brady, the vice-president of the company and the man who offered the resolution at the directors' meeting against the commencement of the proposed suit, pays Mr. Mills, the man who is about to begin a suit against him, $5,000, being all the money that Mr. Mills has ever paid out in the litigation.

Mr. Mills' testimony to that effect is as follows (Rec., p. 189):

> "Q. So that, have you paid out any money at all in this case except the $5,000 that you paid by check to Mr. Guthrie? A. I think not.
> "Q. And that you got back from Mr. Brady? A. Well, I don't think I got it back from him.
> "Q. Well, you got $5,000 from him? A. Yes, sir."

Mr. Mills was indeed a fortunate individual. He had paid his counsel $5,000 for the purpose of beginning a suit against the Peoples Company and before the suit was actually filed the vice-president of the company reimbursed him for the entire outlay.

The generosity of Mr. Brady is unparalleled in the history of legal literature. The history of lawsuits usually deals in acts of selfishness, greed and a studied effort on the part of each person to better his own pecuniary condition. Mr. Brady, however, according to this record, is not endowed with the ordinary instincts of selfishness. The spirit of altruism displayed by Mr. Brady goes far beyond the dream of the most optimistic social philosopher.

On June 8, 1903, Mr. Mills filed a bill (Rec., p. 83) praying, among other things, that an injunction is-

sue "against the defendant, the Peoples Gas Light and Coke Company, restraining and enjoining it, its officers, servants, agents and employes from complying with the aforesaid ordinance of October 15, 1900, or any of the provisions thereof and from submitting thereto and from reducing the price of gas to 75 cents per thousand cubic feet under compulsion thereof."

As Mr. Brady was the vice-president and one of the directors of this company, under familiar rules of law, he came within the terms of the restraining order. We have, then, the anomalous state of affairs that the vice-president of a company pays all the expenses of a suit that is brought against him and his company, enjoining him and his company from complying with the law. We do not believe that in the entire literature of the law can be found another case where a man has paid to his adversary before the suit is commenced the entire expense of obtaining an injunction against himself. This amazing state of affairs is brought about through the attempt of the officers of this company to carry on a dishonest and collusive contest for the purpose of conferring upon a Federal Court jurisdiction in a case where such jurisdiction is wanting.

Mr. Brady testified (Rec., p. 247) that when he and Mr. Guthrie discussed this suit, they "laughed about it." It surely has its humorous side, but it is one of those cases where the iniquity of the transaction so far transcends the humor that what might otherwise be regarded as a comedy becomes a tragedy. The three hundred and fifty thousand consumers of gas who are deprived of their rights by this collusive and dishonest combination do not see as much humor in

this situation as the venerable vice-president of the corporation and his astute counsel.

It is well to bear in mind that although the bill of complaint in this cause was filed on the 8th day of June, 1903, the application for a preliminary injunction was not argued until the 5th day of December, 1903. Before the application for a preliminary injunction had been considered by the court, and in July or August, 1903, Mr. Meagher, counsel for the Peoples Company, went to New York and retained Mr. Guthrie, the counsel for the stockholder who was making such serious charges against the company, as the counsel for the company. (Rec., p. 258.) Mr. Guthrie had already informed Mr. Meagher and his own client, Mr. Mills, according to the evidence of Mr. Meagher, that the Peoples Company could not possibly win the appeal of the company's case in this court.

We have, then, this astonishing state of affairs: That Mr. Guthrie, who has informed the Peoples Company's counsel that that company cannot win, is retained to argue the very case that Mr. Guthrie has no confidence in, and Mr. Mills, who is fighting the directors of this company for their flagrant breach of duty, sees no impropriety in those very directors engaging his own counsel to argue a case which that counsel thinks is unfounded. Mr. Guthrie, with his high sense of professional honor, does not see any impropriety in accepting a retainer for the purpose of arguing a case that he thinks is unfounded.

On November 24, 1905, the Peoples Company filed an answer and the prayer of that answer was as follows (Rec., p. 128):

"And now having fully answered, this defendant prays to be hence dismissed with its reasonable costs in this behalf sustained."

In other words, the Peoples Company prayed that the bill might be dismissed as to it and that the complainant, Mills, should be ordered by the decree of this court to pay to the Peoples Company its costs. That answer was filed for the purpose of imposing upon the court and counsel for the City and inducing them to believe that there was a real controversy between Mr. Mills and the Peoples Company. The last examination of the officers of the company in New York shattered all hope of counsel being able to further maintain this sham battle.

Mr. G. O. Knapp, the president of the Peoples Company, was called to the stand in behalf of Mr. Mills and testified on direct examination as to the number of consumers the Peoples Company had in the City of Chicago, the number of miles of mains and the method by which the company's business was conducted. Upon cross examination Mr. Knapp was asked if he was served with any subpoena to come to this hearing, and he replied, "No, sir." He then stated (Rec., pp. 213, 215) that Mr. Meagher told him to come to this hearing, and testified as follows:

"Q. And when did he next speak to you (referring to Mr. Meagher)? A. I think he told me yesterday morning that he wished me to come to the hearing today.

"Q. Where did you see him that time? A. At the Hoffman House."

And further (Rec., p. 214):

"Q. Did Mr. Meagher say anything about what he expected to prove by you here today? A. He talked the case over generally. * * *

"Q. Did he ask you as to how many mains the Peoples Company had in the streets of the City of Chicago? How many miles? A. I think he did.

"Q. What did you tell him? A. I gave him the information."

Then follows a detailed cross examination of Mr. Knapp, in which he admits that Mr. Meagher asked Mr. Knapp at the Hoffman House, the day before, the same questions that Mr. Guthrie put to Mr. Knapp while on the stand. Mr. Knapp further testified that Billings, another director of the company, was also present and talked this matter over and that Mr. Meagher took Mr. Billings and Mr. Knapp both down to Mr. Guthrie's house that same day and there again the same ground was gone over.

The exact evidence on this subject being as follows (Rec., p. 216):

"Q. Have you ever talked with Mr. Guthrie about this case? A. Yes.

"Q. When? A. Yesterday afternoon.

"Q. Where did you meet Mr. Guthrie? A. At his house.

"Q. What time was that? A. About half-past four, I think.

"Q. Who were present at that talk? A. Mr. Meagher, Mr. Billings and myself.

"Q. Was Mr. Brady there? A. No, sir.

"Q. Did you talk anything about this case to Mr. Guthrie at the time? A. Yes, sir.

"Q. Did you talk over any of the things that you and Mr. Meagher had discussed at the Hoffman House at Mr. Guthrie's house? A. The same questions that you spoke of."

This hearing was had on the 2nd of January, 1906. We have, then, this remarakble state of affairs, that while the attorney for the Peoples Company has filed an answer in which he claimed that he wanted the bill dismissed, that very same attorney, Mr. Meagher, was gathering up the witnesses for the complainant Mills and bringing them to Mr. Guthrie's house and talking over the very matters that those witnesses were questioned about the next day while on the witness stand. Was such a spectacle ever before presented in a court of justice? The defendant, who claims to be hostile to the plaintiff, goes out on New Year's Day and gathers together all the plaintiff's witnesses and brings them to the house where the attorney for the plaintiff resides. Not content with that, the attorney for the defendant goes over the entire testimony of the plaintiff's witnesses so as to see that they are able to prove the allegations of the plaintiff's complaint and yet counsel has the temerity to assert that there is no evidence of collusion contained in this record.

Mr. Knapp, the president of the company, further testified as follows (Rec., p. 218):

> "Q. But as president of this company, are you in favor of seeing Mills win this suit or are you in favor of seeing Mills lose this suit in which we are now taking evidence? A. I don't know the legal points involved, and I would have to ask my counsel all the legal points before giving an opinion on that."

The president of a corporation here testifies under oath that in a suit that has attracted so much notoriety as the case at bar and in a case where he had been in conference all of the previous day with

Mr. Meagher, the counsel of the company, he did not know whether he wanted to see the company win or lose until he had consulted his counsel.

Mr. Brady, however, took the stand and testified that he was in favor of seeing Mr. Mills win his suit. Mr. Meagher testified (Rec., p. 265):

> "I have never lifted a finger to assist Mr. Mills in any way."

Yet he further testified (Rec., pp. 265, 266): That he had appeared two or three times before Mayor Dunne and tried to get the mayor to agree to an extension of Mr. Mills' time to close his proofs. Mr. Meagher also admitted that four applications were made by him for an extension of Mr. Mills' time to close his proofs and that he had complained to Mayor Dunne that the City was treating Mills unfairly in attempting to get a $15,000,000 injunction bond in this case. It may be that Mr. Meagher desires that his evidence should be literally construed about not lifting a finger, but in view of what is contained in this record, it is plain beyond controversy that Mr. Meagher has been the most active and aggressive counsel for Mr. Mills.

After the testimony had been closed in this case, and after the president of the company himself had testified as to how Mr. Meagher had gathered up Mr. Mills' witness and brought them to Mr. Guthrie's house, it became evident even to counsel for Mr. Mills that it was folly to argue to any fair-minded person that there was any real controversy between the Peoples Company and Mr. Mills, so on the 30th day of January, 1906, the Peoples Com-

pany filed an amended answer, in which was contained the following startling prayer (Rec., p. 128):

> *"Wherefore this defendant prays that the complainant may have the relief prayed by him in the amended bill of complaint in the above entitled cause."*

On November 24, 1905, the Peoples Company prayed that the suit against it might be dismissed, that the costs should be taxed against Mr. Mills. Less than five weeks thereafter the same company files an amended answer in which the prayer is directly contrary to the prayer contained in the former answer. The last answer filed is also remarkable in another respect. *It is the first instance on record, we believe, where a defendant corporation has filed an answer, praying that the complainant may be awarded a perpetual injunction against it.*

But counsel tell us that there is no evidence that the $5,000 check paid by the vice-president of the company was the company's money. It is argued that before collusion can be proved in this case, it is necessary to show that the check was drawn by the treasurer of the company and that a resolution of the Board of Directors was passed, authorizing the treasurer to pay the money to Mr. Mills. Such an argument is unworthy of any answer.

If the above proposition is sound, then collusion could never be proved in any case. Men who engage in collusive litigation never sign, seal, execute and deliver the evidences of their own fraudulent conduct. There is, however, a most significant circumstance which shows that Brady himself knew that this $5,000 came from the company. After Mills had been subpoenaed as a witness in New

York city, but before he had testified, Mr. Brady went to Mr. Mills' office and what took place there was described by Mr. Mills as follows (Rec., p. 190):

> "Q. But when did you meet him before this hearing? (Referring to Mr. Brady.) A. I saw him, it must be since I had notice of this meeting."
>
> * * * * * * * *
>
> "Q. What did he say? A. Well, I don't know that he said directly that he sent his contribution to this suit, but he said that it was his own money and he did not give it—it was his own money that he sent in.
>
> "Q. It was his own money? A. Yes.
>
> "Q. He did not get it from where? A. It did not come from the company."

It is to be remembered that at the time Mr. Brady found it necessary to go over to Mr. Mills' office and caution Mr. Mills against the notion that the $5,000 check given by Mr. Brady was not the company's money, that at that time no evidence had been given about the $5,000 check and no claim had ever been made by anybody that the $5,000 check was the company's money. Mr. Brady's mission to Mr. Mills at that time shows two things: First, that Mr. Brady knew that the money came from the company; and, second, that he feared that unless Mr. Mills was coached on this matter Mr. Mills might happen to tell the truth about it.

If the jurisdiction of this court in behalf of Mr. Mills can be sustained, then there is no case *where a stockholder cannot go into the Federal Court if he is willing to make an appropriate allegation.*

The fact that the vice-president of the company pays the expenses of the litigation, we are told, is

no obstacle; the fact that the alleged dissenting stockholder employs the same counsel as the company and at the same time, we are told, is no evidence of collusion; the fact that the attorney for the company gathers the evidence for the complainant, we are told, is no evidence of collusion; and finally, we are told, that the fact that the company itself prays that the dissenting stockholder may have an injunction against the company should be disregarded in determining whether or not this suit is collusive.

If the right of the stockholder to maintain this suit shall be sustained, the law on the question of when a stockholder may intervene in a Federal Court and bring a suit to redress corporate grievances, will be very much simplified. It will amount to this: Whenever a stockholder is willing to make under oath the appropriate allegations, his bill will be maintained, regardless of all the circumstances of collusion, fraud and combination, that cluster about the conduct of the litigation.

We respectfully submit that no such law ever has been nor ever will be laid down by our Federal Courts. It would be a reproach to a court that bears the name of equity if men who have been guilty of deceiving and imposing upon the court in the manner described in this record should be permitted to obtain their relief in the very same tribunal.

But counsel tell us that we should have direct and positive evidence of collusion. A contention of that kind is certainly an innovation in a legal argument. In the numerous cases hereinafter quoted in our brief, we shall show that collusion was readily

inferred by courts from facts and circumstances alleged in the bill of complaint, even where the parties in that very bill denied its existence. But if direct and positive evidence of collusion is essential, this record meets not only the requirements of this court, but it comes up even to the more rigorous rule announced by complainant's counsel, namely, that the evidence should be direct.

Mr. Mills, when interrogated by his own counsel, testified as follows (Rec., 164):

> "Q. Was the suit brought to confer on the Court of the United States jurisdiction of a case which it would not otherwise have cognizance of? A. I so understood it.
>
> "Q. Did you hear the question, Mr. Mills? A. I so understood it, yes, sir.
>
> "Q. You understood what? A. The question as put, if you will read it.
>
> (Question read.)
>
> "A. Yes, sir."

It will be noted that Mr. Mills, the complainant himself, in the above testimony, plainly and unequivocally says in answer to the question of his own counsel that he understood that this suit was brought to confer on the court of the United States jurisdiction of a case which it would not otherwise have cognizance of. His counsel then adroitly suggested to the witness: "Did you hear the question, Mr. Mills?" intimating to the witness that the answer was unsatisfactory and giving him an opportunity to change the answer to conform with counsel's theory. The question was again read and the witness made the same answer. Counsel tells us that Mr. Mills did not understand this question. Mr.

Mills says that he did. Counsel here ask us to assume that Mr. Mills did not understand this question when he says he did, and counsel ask us to assume that he would have answered it differently from what he did had he understood the question.

The court says in its opinion that this testimony of Mr. Mills (Rec., 386) "impresses one, reading it, rather as a misunderstanding of the questions put, than as an admission of any agreement between Mills and the company."

The question was first put to Mr. Mills, and he answered it directly. He was then asked if he understood the question, and he replied that he did. It was again read to him, and he answered it in the same way.

The reading of Mr. Mills' testimony does not so much impress one that Mr. Mills "misunderstood" *the question*, as that he "misunderstood" *the effect the answer to the question would have upon his lawsuit*. The question was plain and simple; it was read to the witness twice, and he answered it both times in the same way, and his own counsel did not dare to press the subject any further, for fear that each succeeding answer would confirm the accuracy of the prior one. We are not familiar with any rule of either law or logic, which justifies a court in saying that a witness meant, not what he plainly testified to, but the diametrically opposite.

At the time when the bringing of Mr. Mills' suit was under discussion, it was evidently fully explained to Mr. Mills that the suit of the Peoples Company had been dismissed, for want of jurisdiction, because that company was a citizen and a resident of Illinois, and Mr. Mills was undoubtedly told

that he, being a citizen of California, could bring a suit, of which the United States Court would have jurisdiction. Mr. Mills, when he took the witness stand, had in mind matters which had been related to him, namely, that his suit was brought for the purpose of conferring on a court of the United States jurisdiction in a case where jurisdiction was otherwise wanting. Mr. Mills did not know there was anything wrong or improper about the commencement of such a suit, and when he truthfully answered the above questions propounded to him by his own counsel, he did not know that the admissions made by him were going to defeat his lawsuit. Had he so appreciated the force of his answer, he undoubtedly would have answered the question, not according to the truth, but according to the answers which his own counsel desired, but which Mr. Mills did not then understand. In other words, Mr. Mills' answer does not result from any misunderstanding on his part of *the question*, but rather a misunderstanding on the part of Mr. Mills of *the kind of an answer that Mills' counsel wanted him to give.*

We are told in this case that we should disregard the numerous facts and circumstances showing the collusive and fraudulent character of this suit; we are told that we should disregard the testimony of the complainant himself; we are told that when the complainant says that this case was brought for the purpose of conferring jurisdiction of a case of which the Federal Court would not otherwise have jurisdiction, that Mr. Mills did not mean what he said, but that he meant directly the opposite. The absurdity of such a contention does not merit any

serious consideration. This suit was evidently instituted for the purpose of conferring jurisdiction upon the Federal Court in a case where jurisdiction would otherwise be wanting, and Mr. Mills' testimony to that effect is corroborated by every instinct of human nature—by every witness—and by every fact and circumstance in the record.

Judge Grosscup, in his opinion (Rec., p. 386), said, concerning the proof required in order to make out a case of collusion:

> "But circumstantial evidence, to be conclusive from the mere fact of cumulation, must lead the judgment to this conclusion that, all the circumstances considered, there is no explanation for their existence except upon the existence of the fact sought to be proven. That condition of things does not exist here."

The above opinion of Judge Grosscup was erroneous in two particulars. In the first place Judge Grosscup cast the burden of proof upon the defendant to establish the existence of collusion. Equity Rule 94 of this court casts the burden of proof on the complainant, for that rule requires that the complainant must allege and prove that the stockholder's suit was instituted in good faith and without collusion with the corporate officers.

The rule laid down by Judge Grosscup was erroneous in another particular. It required that the facts in the case should be inconsistent with any other hypothesis than that of collusion. This requires proof beyond all *possibility* of doubt.

The rule in civil cases is that a fact is established when the mind of the court leads to the natural and reasonable inference of the existence of that fact.

even though that fact might be explained on some other hypothesis. As Herbert Spencer said: "Anything which does not involve an absolute contradiction in terms is possible." Even should we concede that it is *possible* that there was no collusion in this case it is far beyond the realm of any reasonable human *probability*.

The fact that in a case where the question of conferring jurisdiction upon a Federal court by getting up a collusive controversy is involved, the burden of proof is upon the complainant, is established by the well considered case of *Lehigh Mining & Manufacturing Co.* v. *Kelly*, 160 U. S., 337. It was insisted in that case that there was no formal agreement between the corporation then before the court and the Virginia corporation, that the title should be reconveyed to the Virginia corporation, and therefore the court could not infer the existence of such an agreement. This court denied the efficacy of that contention and said, page 337:

> "It is also true that there was no formal agreement upon the part of that corporation 'as an artificial being, invisible, intangible, and existing only in contemplation of law,' that the title should ever be reconveyed to the Virginia corporation. But when the inquiry involves the jurisdiction of a Federal Court—the presumption in every stage of a cause being that it is without the jurisdiction of a court of the United States, unless the contrary appears from the record (*Grace* v. *American Cent. Ins. Co.*, 109 U. S., 278, 283 [27: 932, 934]; *Bors* v. *Preston*, 111 U. S., 252, 255 [28: 419, 420])—we cannot shut our eyes to the fact that there exists what should be deemed an equivalent to such an agreement, namely, *the right and power* of those who are stockholders of each corporation to *compel* the

one holding the legal title to convey, *without a valuable consideration*, such title to the other corporation. In other words, although the Virginia corporation, as such, holds no stock in the Pennsylvania corporation, the latter corporation holds the legal title, subject *at any time* to be divested of it by the action of the stockholders of the grantor corporation who are also its stockholders."

II.

There is no force in the contention that there was a real controversy between Mr. Mills and the directors of the Peoples Company when the bill in the cause was filed.

Counsel for complainant Mills contended that there was a real and substantial controversy between Mr. Mills, the stockholder, and the Board of Directors and officers of the Peoples Company at the time the bill of complaint was filed and that at that time the Peoples Company and its officers were endeavoring to defeat Mr. Mills' suit, but that after the decree of the Circuit Court dismissing the bill of complaint of the Peoples case was affirmed by this court and after the quo warranto proceedings instituted by the State's Attorney of Cook County, Illinois, had been affirmed by the Supreme Court of Illinois, the officers and directors of the Peoples Company experienced a change of heart and then became in favor of Mr. Mills' suit, because they then discovered that the Company would obtain no relief from the Peoples Company's suit in this court.

Concerning this, Judge Grosscup said (Rec., 386):

"Since the Mills suit was brought the Company suit had been heard and affirmed by the

> Supreme Court of the United States. The Company is without hope now of any relief through that suit; but that does not prove that at the time the Mills suit was brought the Company did not reasonably believe that the decree of the Circuit Court of the United States, dismissing the bill, would be reversed."

The belief of a corporation—if such a term can be applied to it, can only be the belief of its officers and attorneys. Evidently Mr. Brady, the vice president and director of the Peoples Company, did not believe on the 14th day of May, 1903, that the decree of the Circuit Court, dismissing the Peoples Company's bill, would be reversed by this court, else, why did he pay $5,000 to Mr. Mills for the purpose of commencing a suit, to contest the validity of the same ordinance?

Mr. William D. Guthrie was retained as counsel for the Peoples Company in August, 1903. On the 5th of December, 1903, Mr. Guthrie did not believe, as the counsel for the Peoples Company, that the decree of the Circuit Court, dismissing its bill, would be reversed, otherwise, why did he press the application of the complainant Mills for an injunction in the stockholder suit?

On the 30th day of January, 1906, after the taking of testimony in this cause had been closed, the above theory was invented by counsel for Mills and the Peoples Company, and at that time an answer was filed (Rec., p. 370), which, for the first time, set forth the above theory in the following language (Rec., p. 383):

> "This defendant further answering shows unto the court that subsequent to the filing of the original bill of complaint in the above en-

titled cause, the decree of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, in the aforesaid suit brought by this defendant against the City of Chicago, was affirmed on the appeal of this defendant, by the Supreme Court of the United States, as hereinbefore set forth, and that the judgment of said Circuit Court of Cook County, Illinois, in the quo warranto proceedings aforesaid was affirmed on the appeal of the People of the State of Illinois, by the Supreme Court of Illinois, as hereinbefore set forth, and that by reason of the final disposition of the aforesaid appeal to the Supreme Court of the United States and of the aforesaid appeal to the Supreme Court of Illinois, both of which said appeals were pending at the date of the filing of the original bill of complaint herein, the grounds for the original refusal of this defendant to institute further legal proceedings against the City of Chicago for the purpose of restraining the enforcement of said ordinance of October 15, 1900, have ceased to exist and that it has, therefore, become and now is to the interest and advantage of this defendant, that the complainant in the above entitled cause shall prevail in the said cause, and that this defendant is advised by counsel that it would not be justified in instituting additional or independent litigation presenting the same question as that involved in the above entitled cause, during the pendency of said cause.

"Wherefore, this defendant prays that the complainant may have the relief prayed by him in the amended bill of complaint in the above entitled cause."

That the above theory was an afterthought and was never intended to be pressed while the hearing was going on is clearly made out by an examination of the prior answer in this case. It will be noted

that the foregoing answer states that by reason of the affirmance by this court of the decree of the Circuit Court in the Peoples Company's case and the affirmance by the Supreme Court of Illinois of the judgment of the Circuit Court of Cook County in the quo warranto case "the grounds for the original refusal of this defendant to institute further legal proceedings against the City of Chicago for the purpose of restraining the enforcement of said ordinance of October 15, 1900, have ceased to exist and that it has therefore become and now is to the interest and advantage of this defendant, that the complainant in the above entitled cause shall prevail in said cause. * * * Wherefore this defendant prays that complainant may have the relief prayed by him in the amended bill of complaint in the above entitled cause."

On the 27th of October, 1903, only a few months after Mills' bill of complaint was filed, the Supreme Court of Illinois entered a judgment, affirming the judgment of the Circuit Court of Cook County, Illinois, dismissing the quo warranto proceedings against the Peoples Company. On the 4th of April, 1904, this court entered a judgment affirming the decree of the Circuit Court in dismissing the bill of complaint of the Peoples Company.

On November 24, 1905, after this cause had been referred to a special examiner for the taking of testimony, Mr. Meagher, counsel for the Peoples Company, for the first time, filed an answer to Mills' bill of complaint in this cause.

The fact that the Supreme Court of Illinois had affirmed the judgment of the Circuit Court of Cook County of Illinois, dismissing the quo warranto pro-

ceedings brought against the Peoples Company, and the fact that this court had affirmed the decree of the Circuit Court, dismissing the bill of complaint of the Peoples Company,—both of the above facts were then well known to counsel for the Peoples Company. If the Peoples Company were antagonistic to Mr. Mills at the time his bill of complaint was filed, but by reason of the above decisions, they were in favor of the Mills suit, why did not the answer of the Peoples Company, filed November 24, 1905, disclose that fact? If the officers of the Peoples Company were then in favor of seeing Mr. Mills sustain his suit, why did not the answer filed on November 24, 1905, pray as did the amended answer of January 30, 1906, that "the complainant may have the relief prayed by him in the amended bill of complaint in the above entitled cause"? Why did counsel for the Peoples Company in their answer filed November 24, 1905, conclude by saying (Rec., p. 128), "And now having fully answered this defendant prays to be hence dismissed with its reasonable costs in this behalf sustained"? Counsel who drew that answer very well knew that if Mills' bill of complaint as to the Peoples Company was dismissed, the injunction which had previously been granted would be vacated and set aside and Mills' bill against the City of Chicago would also have to be dismissed at the cost of Mr. Mills.

The above facts clearly and conclusively demonstrate that when the answer of October 24, 1905, was filed the Peoples Company and its officers and attorneys wanted to deceive and mislead the court and counsel for the City of Chicago by maintaining a pretended opposition to the bill of complaint of

Mr. Mills, in the hope that by so doing counsel for the Peoples Company could induce the court to believe that there was then a real controversy between the directors of the Peoples Company and Mr. Mills.

Why did Mr. Meagher file an answer on November 24, 1905, in behalf of the Peoples Company, praying that the bill of complaint of Mills, the stockholder, against the Peoples Company, should be dismissed, and why did Mr. Meagher, on the 30th day of January, 1906, less than two months thereafter, file an answer which prayed for the diametrically opposite relief, namely that Mills, the stockholder, should obtain an injunction in accordance with the prayer of his bill of complaint?

We have demonstrated that the claim made by Mills' counsel in the court below and sustained by Judge Grosscup, namely, that Mr. Meagher's change of heart, as evidenced by his answer of January 30, 1906, was brought about by the changed conditions resulting from the decision of this court in the Peoples Company's case and that of the Supreme Court of Illinois in the quo warranto case, does not explain, for both of the above decisions had been rendered more than a year prior to the filing of the answer of November 24, 1905, in which the Peoples Company still pretended to insist that that Company was fighting Mr. Mills' suit and wanted that suit dismissed at Mills' cost.

When Mr. Billings, one of the directors of the Company, was being cross examined in the hearing before the Examiner, on January 2, 1906, the following occurred (Rec., p. 235):

"Q. Have you any interest in the outcome of

this case, so far as any desire that one party should win or lose? A. My wish is now that the case should be won, to decide the price question.

"Q. You mean that Mr. Mills should win? A. Yes, sir."

It became evident to counsel for Mr. Mills that after it had been brought out on the hearing of this cause that Mr. Meagher, the attorney for the Peoples Company, had gathered up Mr. Mills' witnesses and canvassed their testimony, and taken them to Mr. Guthrie's house, so as to enable Mr. Mills to win his suit, and after Mr. Billings, one of the directors and largest stockholders of the Company, had testified before the Examiner that he desired Mr. Mills to win, it was useless to further keep up the sham battle which had characterized their conduct prior thereto.

On January 30, 1906, counsel for Mr. Mills and the Peoples Company appreciated that some explanation would have to be made as to why the officers and directors of the Peoples Company had assisted Mr. Guthrie, the counsel for the stockholder, in gathering Mr. Mills' witnesses and proving Mr. Mills' case. The amended answer of January 30, 1906, was intended to pave the way for the new theory of Mr. Mills' counsel, invented for the purpose of attempting to explain away the confessedly incriminating evidence of complainant's own witnesses.

The fact that during the hearing of this cause on January 2, 1906, counsel for the Peoples Company was still attempting to carry on the sham law suit against Mr. Mills and to impose upon and deceive

the court in reference to the fact that there was no controversy between them is evidenced by the testimony of Mr. Knapp, the president of the Company. When he was questioned on January 2, 1906, as to whether he was in favor of seeing Mr. Mills win or lose the case then on trial, he answered: "I don't know the legal points involved. I would have to ask my counsel all the legal points before giving an opinion on that."

It is to be remembered that Mr. Knapp is a bright intelligent business man, that he and Mr. Billings had been in conference with Mr. Meagher, counsel for the Company, all of the preceding day, and that they had met and talked this matter over with Mr. Guthrie, counsel for Mr. Mills, in the afternoon of the day before.

We all know that the moment a corporation is involved in a law suit the manager makes up his mind whether he wants his Company to win or lose. It is taxing human credulity too much to ask us to believe that after an all-day conference with Mr. Meagher and Mr. Guthrie, Mr. Knapp came away without knowing whether he wanted Mr. Mills to win or lose.

It is clear beyond controversy that Mr. Knapp knew when he was testifying that Mr. Meagher wanted to see Mr. Mills win the suit and that Mr. Meagher was then and had all the time been giving Mr. Mills all the assistance in his power. Why did Mr. Knapp conceal from the court his own desires in this matter? The explanation is very apparent. Mr. Knapp knew that Mr. Mills was pretending to fight the directors of the Peoples Company, and he feared that should he answer this question truthfully, it

might establish the collusive character of this law suit.

The same studied effort to conceal from the court the real part that the officers of the Peoples Company had taken in assisting Mr. Mills is illustrated by Mr. Meagher's testimony. Mr. Meagher was present in the court room when Mr. Billings testified that he would like to see Mr. Mills win his case, so Mr. Meagher testified the same way (Rec., p. 264), but Mr. Meagher denied emphatically that he had ever assisted Mr. Mills in any way. The following is his testimony on that subject (Rec., p. 265):

> "Q. You have assisted Mr. Mills in every way you could to win his suit, have you not? A. No, sir, I have never lifted a finger to assist Mr. Mills in any way.
>
> "Q. Well, as a lawyer for the Company, do you mean to say that you have not tried to help out that side which you think ought to win? A. As lawyer for the Company I mean to say that I have done my duty as I have seen it.
>
> "Q. Well, don't you conceive it to be your duty to assist Mr. Mills to win, if you think he ought to win? A. No, I have done nothing to assist Mr. Mills in any way, shape or manner."

Mr. Meagher had to admit, however, on further cross examination (Rec., p. 265), that he went two or three times to Mayor Dunne and asked the mayor to grant to Mr. Mills an extension of time for Mr. Mills to close his proofs. Mr. Meagher further admitted (Rec., p. 266) that he told Mayor Dunne that it was unfair that the City of Chicago should ask a bond of $15,000,000 from Mr. Mills.

The contention that there was a change of attitude towards Mr. Mills after the disposition of the

Peoples Company's case in this court and the quo warranto in the Supreme Court of Illinois, is utterly disproved by the testimony of Mr. Meagher. He testified (Rec., p. 267) that on December 5, 1905, when the application of Mr. Guthrie for a preliminary injunction in favor of Mr. Mills against the Peoples Company came up before Judge Grosscup he was in court but did not say a word either for or against the granting of the writ; and further:

> "Q. Were you opposed or were you not opposed to the granting of that injunction? A. I was absolutely neutral.
> "Q. Indifferent? A. I was neutral."

No controversy is more bitter than a *real contest* between the majority and minority stockholders of a corporation with reference to its policy. The bill of complaint of Mr. Mills made the most serious charges of neglect of duty on the part of the officers and directors of the Peoples Company.

Is it possible that Mr. Meagher, the attorney for the Peoples Company, had absolutely no ideas on December 5, 1903, when the application for a preliminary injunction against the directors and stockholders of his Company was heard, as to whether or not those charges were well founded? Who ever heard of counsel for one of the contending factions in a real controversy between stockholders remaining absolutely "neutral"? Who ever heard of the counsel for a defendant being in open court when an application for an injunction against his clients was heard and considered, remaining absolutely silent and having no opinion and no preference as to whether or not that injunction should be granted?

III.

The undisputed evidence in this record shows that the corporate rights were being adequately protected by the officers of the Peoples Company at the time the bill of complaint was filed, and therefore a stockholder had no standing in the Federal Court.

Should we concede, for the sake of argument, that it has not been established in this case that Mr. Mills' suit was brought at the request of and for the benefit of the Peoples Gas Light and Coke Company, there is another reason why a Circuit Court of the United States had no jurisdiction over complainant's bill. On December 16, 1902, at the time Mr. Mills claims to have made a demand upon the Board of Directors of the Peoples Company to institute another suit against the City of Chicago, the case of the *Peoples Gas Light and Coke Company* v. *The City of Chicago*, was then pending in this court, and the injunction that had been issued in that case was in full force and effect. It was not until April 4, 1904, a year and a half thereafter, that that injunction became inoperative by the affirmance in this court of the said case of *Peoples Gas Light and Coke Company* v. *City of Chicago*.

The letter addressed to Mr. Mills by the Peoples Gas Light and Coke Company did not contain any intimation or statement that it was the intention of the officers and directors of the Peoples Company to comply with the ordinance of October 15, 1900, but said letter stated "*the board felt constrained under all the circumstances to decline to institute any further litigation at the present time.*"

Surely, no person could find fault with the officers

and directors of the Peoples Company, because they declined to institute any further litigation against the City of Chicago while the Peoples Company's rights were adequately protected by an injunction that was then in full force and which continued in force for more than a year and a half thereafter.

The minutes of the Directors' meeting held on January 29, 1903, contained the following entry (Rec., p. 278):

> "Counsel advised the Board that in his opinion the only safe course to be pursued, so far as practicable, was to defer action until the Supreme Court of the United States shall have finally decided upon the merits of the case brought by this Company now pending upon appeal to that court, notwithstanding that the result in that case might not be conclusive upon the questions involved in this ordinance."

It will be noted that the Board of Directors did not refuse to institute any further suit to contest the validity of the 75 cent gas ordinance, but they merely asserted that while the rights of the Peoples Company were being adequately protected by the pending suit, it was unwise to institute another suit.

If the exercise of a sound, honest and reasonable discretion on the part of the managers of this corporation required the institution of a suit in the state courts, for the purpose of restraining the enforcement of this ordinance on the ground of a want of power in the city to regulate the price of gas, that action was unnecessary, so long as an injunction was in force in this court. There is no allegation in the bill that any injury would result to the stockholders from a failure to act during the

time that they were protected by the injunction granted in *Peoples Company's* case, and the presumption is that the corporation would have acted as soon as the injunction issued in that case was dissolved.

Independently of any question of collusion, the undisputed evidence in this record shows that the corporate rights of the stockholders were adequately protected by the injunction in force in the case of the *Peoples Gas Light and Coke Company* v. *The City of Chicago*, then pending in this court. No stockholder had any standing in court to interfere, so long as no irreparable injury was suffered or threatened, and certainly not while the board of directors were proceeding in good faith and in the exercise of their best judgment in protecting the corporate rights. That provision is established by all the authorities.

The general rule is that a majority of the stockholders of a corporation, through its board of directors, are invested with the sole power to institute suits in behalf of the corporation and to redress corporate grievances and to determine when and in what courts such suits shall be instituted, and an individual stockholder has no standing for any such purpose.

> *Hawes* v. *Oakland*, 104 U. S., 450-57.
>
> Morawetz on Private Corporations, Sec. 238.

To the foregoing rule should be added the qualification that where a corporation refuses to act and that refusal is arbitrary and wrongful and without just cause and a demand is made upon the corpora-

tion to act and it still refuses, a stockholder may institute a suit in his own name in behalf of himself and other stockholders to protect corporate rights. The mere allegation that a demand has been made upon the corporation and it refuses to act is insufficient to authorize a stockholder to begin suit. It must further appear that the refusal was *wrongful,* constituting a *breach of trust,* for although the corporate officers may have acted erroneously in refusing to bring a suit, that is not sufficient to authorize the stockholders to proceed, so long as it appears that the corporate officers were acting in good faith, with reasonable diligence, and in the exercise of their sound discretion.

Memphis City v. *Dean,* 8 Wallace, 64-73.

Dodge v. *Woolsey,* 18 How., 345.

Wallace v. *Lincoln Savings Bank,* 89 Tenn., 633-35.

Samuel v. *Holladay,* 1 Woolw., U. S. C. Ct., 400.

Morawetz on Private Corporations, Sec. 244.

Hawes v. *Oakland,* 104 U. S., 457-460-462.

The bill discloses on its face that when this bill was filed on June 8, 1903, the bill of the Peoples Company was pending and undisposed of in this court, and a preliminary injunction that had been issued in the Circuit Court was then in full force and effect. In that bill the Peoples Company was attempting to enjoin the enforcement of this very ordinance and upon the very same grounds alleged in the bill in this case, and William D. Guthrie, the counsel for the complainant in this case, appeared in this court on January 20, 1904, as one of the

counsel for the Peoples Company and asserted in his brief, filed in this court, that the ordinance in question impaired the contract rights of the Peoples Company and that therefore it was entitled to relief in a Federal court.

In other words, William D. Guthrie was assisting the Peoples Company in asserting in this court that that company was entitled to full relief in a Federal court on the ground that their contract rights were being impaired by the ordinance in question and at the same time William D. Guthrie was maintaining the stockholder's bill in the Circuit Court in this case and basing his sole right to relief in behalf of the stockholder upon the proposition that the corporation had refused to bring an action in the state court to restrain the enforcement of the void ordinance. In other words, William D. Guthrie, as counsel for Mills, was asserting in the Circuit Court that William D. Guthrie, as counsel for the Peoples Company, was carrying on a suit in this court in a case where a Federal court was without jurisdiction. Jurisdiction by a Federal court to assert the invalidity of the ordinance in question because it impaired the contract rights of the Peoples Company was asserted as a ground of jurisdiction in the company's case. That very jurisdiction was simultaneously denied in the present suit and the absence of that jurisdiction was made the basis for a stockholder's suit, prosecuted by the same counsel and at the same time.

Although bill of complaint in this case was filed on June 8, 1903, and although the officers of this mighty corporation were then charged with failing to institute suits to protect the rights of the corpora-

tion, it is one of the singular incidents in this litigation that no answer to that bill was filed by the Peoples Company and no statement ever made, either admitting or denying the truth of the complainant's charges until November 24, 1905.

It is a matter of common knowledge that persons who are guilty are usually the loudest in protesting their innocence. The absolute silence of this corporation can be reconciled on no other theory than that in maintaining such silence it is acting pursuant to a collusive agreement with the complainant. The theory of complainant that because the Peoples Company filed a bill that was ultimately dismissed for want of jurisdiction, therefore a stockholder had the right to maintain a suit for the same grievance before the litigation had been disposed of in this court and while the rights of the corporation were fully protected by an injunction that was then in full force, is utterly without merit. A stockholder has no standing to redress corporate wrongs, except in a case where the corporation *wrongfully* refuses to act and where he will suffer *irreparable* injury if he is not permitted to maintain his suit.

The present bill was filed on June 8, 1903, and at that time the City of Chicago was restrained by the injunction in the *Peoples* case from enforcing the ordinance in question and that injunction was not dissolved until nearly a year thereafter, namely, on April 4, 1904. There is no allegation in this bill that the Peoples Company did not intend, in the event that it was unsuccessful in this court, to file a bill and secure a restraining order in the state court. Had it done that no one could argue that the corporation had been derelict in any of the duties that it owed to its stockholders.

The Circuit Court stated in its opinion, in *Mills* v. *City of Chicago*, 127 Fed., 731-36, that "the stockholder is entitled to the law, not to a mistaken view of the law; to an action that will lie, not to an action that must be dismissed for want of jurisdiction in the court resorted to." If, by that statement, it is meant that the stockholder has a right to demand of corporate managers infallibility, that they must always bring the right kind of a suit and in the right forum, and whenever they misconceive their remedy or err in matters of procedure, a stockholder may take the litigation out of the hands of the corporation and institute a suit in his own name, the proposition is not sustained by the authorities. The stockholder is entitled to insist that corporate managers shall exercise a reasonable degree of skill, that they must exercise good faith and a sound discretion, but that is the limit of a stockholder's rights.

If, the moment the managers of a corporation misconceive their remedy and institute a suit in the wrong forum, a stockholder can step in while that suit is pending and undisposed of and at a time when no irreparable loss is being suffered or threatened by the corporation, there would be no end to confusion in corporate management, for, should the first stockholder err in the form or the nature of his action, a logical application of the doctrine would lead to the conclusion that another stockholder could supplant him in another forum and there would be no way of determining who were the properly authorized representatives of the corporate rights.

The proposition that a stockholder cannot inter-

fere and take the management of litigation out of the hands of the managers of the corporation, unless the refusal of the corporation to act has been *wrongful*, accompanied by a *breach of faith*, is sustained by all the authorities.

The case of *Memphis City* v. *Dean*, 8 Wallace, 64, is directly in point. It was there held that a mere refusal on the part of the corporate managers to act was insufficient to authorize a stockholder to proceed in his own name, but the stockholder would have to show in addition to that, that there was a breach of duty on the part of the corporate managers, in other words, that the corporate managers had not exercised their sound discretion.

This court there said, page 73:

> "This refusal of the board of directors is essential in order to give to the stockholder any standing in court, as the charter confers upon the directors representing the body of stockholders the general management of the business of the company. *There must be a clear default, therefore, on their part, involving a breach of duty, within the rule established in equity, to authorize a stockholder to institute the suit in his own behalf or for himself and other stockholders who may choose to join.*"

The language of this court in *Hawes* v. *Contra Costa Water Co.*, 104 U. S., 450, is very pertinent to this controversy. There a suit was dismissed upon the ground of collusion, where the evidence was far less direct and conclusive than that contained in this record, and this court there said, page 452:

> "This practice has grown until the corporations created by the laws of the states bring a

large part of their controversies with their neighbors and fellow citizens into the courts of the United States for adjudication, instead of the state courts, which are their natural, their lawful and their appropriate forum. It is not difficult to see how this has come to pass. A corporation having such a controversy, which it is foreseen must end in litigation, and preferring for any reason whatever that this litigation shall take place in a Federal Court, in which it can neither sue its real antagonist nor be sued by it, has recourse to a holder of one of its shares, who is a citizen of another state. This stockholder is called into consultation, and is told that his corporation has rights which the directors refuse to enfore or to protect. He instantly demands of them to do their duty in this regard, which, of course, they fail or refuse to do, and thereupon he discovers that he has two causes of action entitling him to equitable relief in a Court of Chancery, namely: One against his own company, of which he is a corporator, for refusing to do what he has requested them to do; and the other against the party which contests the matter in controversy with that corporation. These two causes of action he combines in an equity suit in the Circuit Court of the United States, because he is a citizen of a different state, though the real parties to the controversy could have no standing in that court. If no non-resident stockholder exists, a transfer of a few shares is made to some citizen of another state, who then brings the suit. The real defendant in this action may be quite as willing to have the case tried in the Federal Court as the corporation and its stockholder. If so, he makes no objection, and the case proceeds to a hearing. Or he may file his answer denying the special grounds set up in the bill as a reason for the stockholder's interference at the same time that he answers to the merits. In either event the whole case is prepared for hearing on the merits, the right

> of the stockholder to a standing in equity receives but little attention, and the overburdened courts of the United States have this additional important litigation imposed upon them by a simulated and conventional arrangement, unauthorized by the facts of the case or by the sound principles of equity jurisdiction."

The contention that a stockholder can institute a suit the moment that the corporate managers err in the exercise of their judgment is clearly disproved by the following language, quoted by this court from Angell and Ames on Corporations, as laying down the correct rule, in *Hawes* v. *Contra Costa Water Co.*, 104 U. S., 450:

> "Though the result of the authorities clearly is, that in a corporation, when acting within the scope of and in obedience to the provisions of its constitution, the will of the majority, clearly expressed, must govern, yet beyond the limits of the act of incorporation the will of the majority cannot make the act valid, and the power of a court of equity may be put in motion at the instance of a single shareholder, if he can show that the corporation are employing their statutory powers for the accomplishment of purposes not within the scope of their institution. *Yet it is to be observed that there is an important distinction between this class of cases and those in which there is no breach of trust, but only error and misapprehension of simple negligence on the part of the directors.*"

In *Huntington* v. *Palmer*, 104 U. S., 482, it was insisted by the complainant that the mere fact that a tax was illegal and that the directors failed to oppose its payment gave a stockholder the right to file a bill in the name of the corporation. The court denied the efficacy of that contention and said:

> "There is not, as in the case of *Dodge* v. *Woolsey* (59 U. S., 331, XV, 401), any averment that this tax is so burdensome as to be destructive of the corporation itself; *nor of any fraud on the part of the board of directors, nor anything to show that their decision not to resist the tax is unwise, or opposed to the best judgment they could exercise in the matter.*"

Continuing, the court said:

> *"There is nothing to repel the reasonable presumption of parties improperly and collusively made in order to invoke the jurisdiction of the Federal Court."*

If, without any proof, the court, merely from the face of the bill, drew the reasonable presumption of parties improperly and collusively made, in order to invoke the jurisdiction of the Federal Court in the *Huntington* case, *supra*, it certainly is not too much to ask this court to invoke the same rule where the evidence establishes that collusion and improper joinder of parties beyond a reasonable doubt.

In *Corbus* v. *Alaska Treadwell Gold Mining Co.*, 187 U. S., 462, this court said, quoting from *Hawes* v. *Oakland*, 104 U. S., 450:

> "We understand that doctrine to be that to enable a stockholder in a corporation to sustain in a court of equity, in his own name, a suit founded on a right of action existing in the corporation itself, and in which the corporation itself is the appropriate plaintiff, there must exist as the foundation of the suit—
>
> "Some action, or threatened action, of the managing board of directors or trustees of the corporation which is beyond the authority conferred on them by their charter or other source of organization;

"Or such a fraudulent transaction completed or contemplated by the acting managers, in connection with some other party, or among themselves, or with other shareholders, as will result in serious injury to the corporation, or to the interests of the other shareholders;

"Or where the board of directors, or a majority of them, are acting for their own interest, in a manner destructive of the corporation itself, or of the rights of the other shareholders;

"Or where the majority of shareholders themselves are oppressively and illegally pursuing a course in the name of the corporation, which is in violation of the rights of the other shareholders, and which can only be restrained by the aid of a court of equity.

"Possibly other cases may arise in which, to prevent irremediable injury, or a total failure of justice, the court would be justified in exercising its powers, but the foregoing may be regarded as an outline of the principles which govern this class of cases.

"But, in addition to the existence of grievances which call for this kind of relief, it is equally important that, before the shareholder is permitted in his own name to institute and conduct a litigation which usually belongs to the corporation, he should show to the satisfaction of the court that he has exhausted all the means within his reach to obtain, within the corporation itself, the redress of his grievances, or action in conformity to his wishes. He must make an earnest, not a simulated, effort, with the managing body of the corporation, to induce remedial action on their part, and this must be made apparent to the court. If time permits, or has permitted, he must show, if he fails with the directors, that he has made an honest effort to obtain action by the stockholders as a body, in the matter of which he complains. And he must show a case, if this is not done, where it could not be done, or it was not reasonable to require it. (See, also, *Detroit* v. *Dean*, 106 U. S.,

537-542; 27 L. Ed., 300, 302; 1 Sup. Ct. Rep., 560; *Quincy* v. *Steel*, 120 U. S., 241; 30 L. Ed., 624; 7 Sup. Ct. Rep., 520.)

"While this case is unlike that in that it does not attempt to transfer from a state to a Federal court a controversy which really belongs in the former,—there being none other than Federal courts in the territory,—yet the principle is the same, for it is an effort to secure for the benefit of the corporation an injunction which it could not itself obtain, and which no individual similarly situated can obtain.

"Immediately after announcing the decision in *Hawes* v. *Oakland*, 104 U. S., 450, *sub nom. Hawes* v. *Contra Costa Water Co.*, 26 L. Ed., 827, this court promulgated an additional equity rule (Rule 94):

" 'Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law; and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action.' "

Continuing the court said:

"It must not be understood that a mere technical compliance with the foregoing rule is sufficient, and precludes all inquiry as to the right of the stockholder to maintain a bill against the corporation. This court will examine the bill in its entirety, and determine whether, under all

the circumstances, the plaintiff has made such a showing of wrong on the part of the corporation or its officers and injury to himself as will justify the suit. *The directors represent all the stockholders, and are presumed to act honestly and according to their best judgment for the interest of all. Their judgment as to any matter lawfully confided to their discretion may not lightly be challenged by any stockholder or at his instance submitted for review to a court of equity. The directors may sometimes properly waive a legal right vested in the corporation in the belief that its best interests will be promoted by not insisting on such right. They may regard the expense of enforcing the right or the furtherance of the general business of the corporation in determining whether to waive or insist upon the right. And a court of equity may not be called upon at the appeal of any single stockholder to compel the directors or the corporation to enforce every right which it may possess, irrespective of other considerations. It is not a trifling thing for a stockholder to attempt to coerce the directors of a corporation to an act which their judgment does not approve, or to substitute his judgment for theirs.*"

The same rule was laid down in *Smith* v. *Prattville Manufacturing Company*, 29 Ala., 503, where the court said, speaking of the action of the directors, page 508:

"There is no violation of the charter and constitution, and no proof of any fraud, wilful neglect, or breach of a known duty, or bad faith, in that exercise of their discretion. Their action was certainly nothing more than a mere error of judgment. There is, therefore, no ground upon which to rest the jurisdiction of the Court of Chancery to interfere with their discretion or with its exercise. (*Dodge* v. *Woolsey*, and other authorities cited, *supra; Ware* v. *The*

Grand Junction Water Works Co., 2 Russell & Mylne, 470.)"

In *Wallace* v. *Lincoln Savings Bank*, 89 Tenn., 632, the precise question here was presented before the court. The court there said, page 635:

> "It must therefore appear, before complainant will be suffered to carry on such a suit, that the corporation, or those authorized to represent it, have been requested to sue, and that they have *wrongfully* (the underscoring is by the court) refused to bring the suit.
>
> "It by no means follows that the mere refusal of the corporation to bring suit will authorize any stockholder dissatisfied with such decision to himself conduct the suit. A very wide discretion is necessarily reposed in the directors of a corporation. It is not the duty of the managers of such associations to bring suit upon every supposed wrong or injury to the corporation. If it were so strangers could never know when a settlement, compromise or adjustment was a finality if the matter was subject to be overhauled at the suit of any discontented shareholder. So a suit might appear so desperate, or be so expensive, or, for good reasons, impolitic, that directors might, in the exercise of a sound discretion, deem it unwise to engage in litigation. In such case, if the refusal be in good faith, the courts will rarely suffer a shareholder to overturn such decision by entertaining his suit, for the same cause of action. To authorize his suit, the refusal of the corporation to sue must appear to have been wrongful."

Again, Morawetz, in his work on Private Corporations, Vol. 1, Sec. 244, says:

> "It is often a matter involving the exercise of much judgment, whether or not it be expedient, in a given case, to begin a litigation on

account of an actionable injury. It is not the duty of managing agents of a corporation to go to law immediately whenever a wrong has been done to the corporation. The advisability of suing for redress, and the time and manner of proceeding, are largely intrusted to their judgment; and it is their duty to give the corporation the benefit of their best judgment in this respect. The refusal of the agents of a corporation to institute legal proceedings on its behalf, even when requested by its shareholders, may possibly be a judicious exercise of the discretion which was conferred upon them by the charter. This discretionary power confided to the agents of a corporation can not be usurped by its shareholders; and therefore the courts will not interfere at the suit of a shareholder to redress an injury suffered by the corporation, merely because its managing agents have in good faith refused to begin a suit in the name of the corporation."

The opinion of Justice Miller in *Samuel* v. *Holladay*, 1 Woolw., U. S. C. Ct., 400, reads as though it was written to fit the facts of this case. There the court said:

"It would be a doctrine attended with very serious consequences if every individual shareholder, assuming the place of the corporation, could decide for it when action should be brought to vindicate its supposed right. Each one of the shareholders might elect to claim a remedy, and resort to a tribunal different from those chosen by every other, and use the courts of equity to enforce his views, regardless of its duly constituted officers and all other parties having interests, rights, and powers equal to his own. In such a struggle the real interests of the corporation might be entirely sacrificed."

Within all the authorities above quoted, it is plain

that a stockholder has no right to interfere and take the management of litigation out of the hands of the board of directors of a corporation, so long as its board of directors are honestly and in good faith and with reasonable diligence, attempting to protect the corporate rights, especially where no irreparable loss is being sustained by the corporation.

Law, unlike mathematics, is not an exact science. It is often difficult to determine what the law is on any given subject until the petition for a rehearing has been denied in the court of last resort. The judges of this court quite frequently disagree on questions concerning which the judges of the lower court entertain no doubt. In view of these facts, to say that a stockholder is entitled to the law and that if the corporate managers do not always take the right course he may take the management of the litigation into his own hands, is to assert the proposition that no matter how competent and capable is the lawyer the corporation employs, if that lawyer, in the exercise of the highest skill and best judgment, misconceives the forum in which the suit is to be brought or the nature of the action, then the corporate managers must step aside and leave the suit to be managed by a stockholder. If that stockholder makes a misstep he in turn must give way to another stockholder. A conclusion that leads to consequences so absurd must necessarily be erroneous. This case presents a forcible illustration of the fallacy of such logic. Corporate managers can only act in legal matters through lawyers. It would appear that if they retained the best legal talent obtainable, they have done enough. Here William D. Guthrie, as counsel for the corporate managers, asserts in this court that a Federal court has jurisdiction in this matter on the ground that

contract rights of the corporation were impaired by the ordinance in question. We are now told that that assertion of Mr. Guthrie is unfounded and we are told that because the corporate managers persisted in prosecuting that suit in this court upon the advice and under the management of Mr. Guthrie, therefore the corporate managers were neglectful of the duties they owed to stockholders, and we are told that Mr. Mills, the complainant in this case, can retain the very same Mr. Guthrie and base the jurisdiction of a Federal court to grant relief in Mills' behalf upon the proposition that the corporate managers neglected the corporate interests, when they, relying upon Mr. Guthrie's advice, persisted in carrying the case through this court instead of instituting a new action in the state courts.

The language of this court in *Lehigh Mining & Mfg. Co.* v. *Kelly*, 160 U. S., 343, reads as though it was written to fit the facts of this case:

> "If this action were not declared collusive, within the meaning of the act of 1875, then the provision making it the duty of the Circuit Court to dismiss a suit, ascertained at any time to be one in which parties have been improperly or collusively made or joined, for the purpose of creating a case cognizable by that court, would become of no practical value, and the dockets of the Circuit Court of the United States will be crowded with suits of which neither the framers of the Constitution nor Congress ever intended they should take cognizance."

James Hamilton Lewis,
Corporation Counsel.

Henry M. Ashton and
David K. Tone,
Special Counsel for the City of Chicago.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 226

CITY OF CHICAGO,
Appellant,

vs.

DARIUS O. MILLS and PEOPLES GAS LIGHT AND COKE COMPANY,
Appellees.

Reply Brief in Behalf of Appellant.

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HENRY M. ASHTON AND
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Geo. Kemmerle Co., Printers, Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 286

CITY OF CHICAGO,
Appellant,

vs.

DARIUS O. MILLS and PEOPLES GAS LIGHT AND COKE COMPANY,
Appellees.

Reply Brief in Behalf of Appellant.

The brief of counsel for appellee Mills consists of an opening statement followed by an argument of the case, which is divided into four subdivisions. We shall answer the various contentions of appellee's counsel in the order pursued in their brief.

Counsel's statement in their brief, page 22, that there was nothing in the order allowing the appeal or in the certificate for an appeal to indicate the question of jurisdiction that was certified to this court, is without merit. A detailed answer to that argument is set forth in this brief under Subdivision II.

The twelve assignments of error referred to by counsel for appellee (Rec., page 390) all deal with the error of the Circuit Court in denying the motion

of the City of Chicago to dismiss this suit upon the ground that the complainant Mills was improperly and collusively maintaining a suit in the Federal Court in a case where federal jurisdiction was wanting.

Counsel further contend that the question whether the board of directors of the Peoples Company rightfully refused to comply with Mr. Mills' request for a new suit, and the further question as to whether irreparable injury was being threatened to the stockholders by reason thereof—that the above questions have no relevancy on this appeal, for they involve questions of the general jurisdiction of the Circuit Court as a court of equity rather than the question of its jurisdiction as a federal court.

It is true that the sole question involved on this appeal is whether Mr. Mills collusively and at the instigation of the Peoples Company filed the bill of complaint in this cause for the purpose of conferring jurisdiction upon a federal court in a case where such jurisdiction was otherwise wanting. In determining the above question, however, the conduct of Mr. Mills and the corporate managers prior to the commencement of this suit is an important factor. Motive is one of the strongest circumstances from which the rightful or wrongful character of human conduct can be determined. If it be true that Mr. Mills' rights were being adequately protected by the corporate managers at the time his suit was started and that no irreparable injury to him as a stockholder was being suffered or threatened, then the inference is very strong that in commencing a new suit he acted, not for the purpose of preserving

his property rights, but at the instance and request of the corporation.

In determining the question of collusion, the proposition as to whether Mr. Mills, by his bill, made out such a case as entitled him to redress corporate wrongs in a court of equity, becomes an important one. The jurisdiction of the Peoples Company in the state court to contest the power of the City of Chicago to pass the ordinance in question was undisputed. The fact that Mr. Mills filed a suit as a stockholder under circumstances where a stockholder had no standing, and the fact that the corporation aided and assisted Mr. Mills in maintaining such a suit—these facts are cogent circumstances tending to show that the Peoples Company desired to avoid the forum of the state courts and were so anxious to go into the federal courts that they were willing to resort to the device of using a stockholder, even where a stockholder's rights were unfounded, or, to say the least, very questionable.

Counsel for appellee also cite a large number of authorities which they claim show that the City of Chicago had no power delegated to it by the legislature of the State of Illinois to regulate the price of gas, on October 15, 1900. This appeal is limited to jurisdictional grounds, and, therefore, we will not enter into a discussion of that question. It is sufficient for us to say that under the laws of the State of Illinois, as expounded by the highest court of the state, the power to regulate the price of gas was delegated to the City of Chicago.

Counsel also annex, as an appendix to their brief, the Act of the State Legislature, approved May 18, 1905, giving to the City of Chicago the power to

fix rates and charges for gas and electricity, and to sell surplus electricity, and an ordinance of the City of Chicago of February 8, 1906, regulating the price of gas thereafter. The evident purpose of bringing before this court matters that are clearly irrelevant and not placed in issue by this appeal is to prejudice the cause of the appellant. The passage of the act in question does not in the least tend to show that the City of Chicago did not have the right to regulate the price of gas prior thereto.

The act in question authorized the City of Chicago to sell surplus electricity and to regulate the price thereof, and as the authority of the city to regulate the price of gas had been questioned by the Peoples Company, out of abundant caution, the legislature inserted in the above act a provision authorizing the City of Chicago to regulate the price of gas so as to place that question beyond controversy.

Another evident purpose of annexing the ordinance of February 8, 1906, was to convey the impression to this court that the ordinance in question settled the suit here in controversy. The ordinance contains no such provision. On the contrary, Section 5 provides that the ordinance shall not affect "suits pending or rights existing at the time this ordinance takes effect or penalties then incurred." Of course, this ordinance is not before the court, for it is a private act, which was neither pleaded nor proved in the court below.

I.

AS TO QUESTIONS ARISING UNDER THE NINETY-FOURTH RULE IN EQUITY.

Counsel say in their brief, page 30: "Nor does any issue of fact arising under denials of due compliance with the ninety-fourth rule involve any question as to the jurisdiction of a circuit court as a court of the United States." This statement is untenable.

Equity rule 94 provides as follows:

> "Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and *that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.* It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action."

In *Hawes* v. *Oakland,* 104 U. S., 450, this court affirmed the decree of the Circuit Court, dismissing the bill of complaint in that cause, because the bill was brought by a stockholder collusively and at the instigation of the corporation, for the purpose of conferring jurisdiction upon a federal court in a case where such jurisdiction was otherwise wanting, and in the case of *Corbus* v. *Alaska Treadwell*

Gold Mining Co., 187 U. S., 462, this court said that it was with a view of correcting the evils arising from the institution of collusive stockholders' suits as a means of evading the jurisdiction of the state courts which led to the promulgation of equity rule 94 by this court.

The case of *Illinois Central R. R. Co.* v. *Adams*, 180 U. S., 28, cited by counsel for appellee, does not sustain their contention. That case says that jurisdiction exists in the Circuit Court of the United States "if the plaintiff be a citizen of another state, if the amount in controversy exceeds $2,000, and the defendant be properly served with process within the district." But the word "plaintiff" as there used, means the *real plaintiff* and not a mere *pretended plaintiff who sues at the request and for the benefit of one of the defendants in the litigation.* No question of collusion was before the court in the *Adams* case. It was conceded that there was diversity of citizenship between the parties to that suit.

If the bill of complaint in any suit brought by a stockholder shows that the suit is a "collusive one" brought for the purpose of conferring "on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance," then it is the duty of the Circuit Court to dismiss such a case, and the failure to dismiss such a suit raises a question of federal jurisdiction under equity rule ninety-four. If upon a final hearing it develops that the suit is a collusive one, brought for the purpose of conferring jurisdiction on a federal court, then upon a motion of any party to the litigation, it becomes the duty of the court to dismiss the suit, and the failure of the court so to do will raise a question of federal jurisdiction.

II.

THE RECORD IN THIS CASE SHOWS THAT A SPECIFIC QUESTION OF FEDERAL JURISDICTION WAS IN ISSUE IN THE COURT BELOW AND WAS PROPERLY CERTIFIED TO THIS COURT.

On the 11th of February, 1905, the City of Chicago filed a general demurrer to complainant's amended bill of complaint (Rec., p. 91), and on August 1, 1905, the court overruled said demurrer. (Rec., p. 93.) On the 19th of August, 1905, the City of Chicago filed an answer (Rec., p. 101), which alleged that this suit was brought by the complainant, Darius O. Mills, *at the request of and for the benefit of the complainant, Peoples Gas Light and Coke Company, with the intent and for the purpose of conferring jurisdiction upon a Circuit Court of the United States in a case where such jurisdiction was wanting.*

On the 23rd day of February, 1906, Judge Grosscup handed down an opinion on said question of collusion and among other things said (Rec., p. 385):

> "On demurrer to the bill, and motion for injunction, the court held that the bill exhibited a case wherein a stockholder might sue, the company declining to sue; and that the ordinance complained of was invalid for want of power in the city council from the state to regulate rates. Accordingly an injunction was issued. *Thereupon the plea was interposed that the suit was collusive—that the stockholder had not brought his suit in good faith, to enforce his rights, and those of the other stockholders, but had brought it because of a collusive understanding between him and the Gas Company, based on the fact that by reason of his citizenship in the State of California a suit by him would lie in the United States Courts, while a*

suit by the company would have been cognizable only in the state courts."

After referring to the evidence introduced by the parties to this cause in support of their respective contentions on the question of collusion, Judge Grosscup decided that the suit was not collusive, but was brought by Mr. Mills in good faith. It will be noted that the *only question decided or discussed by Judge Grosscup in the above opinion was the question as to whether this suit was collusively brought for the purpose of conferring jurisdiction upon a Federal Circuit Court in a case where such jurisdiction was otherwise wanting.*

On February 27, 1906, a final decree was entered (Rec., p. 387) on the bill of complaint of the Peoples Company. On the 6th of March, 1906 (Rec., p. 389), the City of Chicago filed a petition for an appeal to this court, which recited that the Circuit Court committed error "by the final decree pronounced in this cause on the 27th day of February, 1906, and by the interlocutory orders and decrees heretofore pronounced in this cause, *in and by which said interlocutory orders and final decree this court assumed and asserted jurisdiction as a Circuit Court of the United States over this cause against this defendant;* and this defendant shows that said Circuit Court erred in taking jurisdiction of the bill and in not dismissing the bill in this cause for want of jurisdiction.

"And this defendant prays that an appeal should be allowed from this court to the Supreme Court of the United States *solely on the question of jurisdiction and that the question of the jurisdiction of the Circuit Court of the United States, for the North-*

ern District of Illinois, Eastern Division thereof, as a Federal Court in this cause, be certified to the Supreme Court of the United States by this court; and the said defendant, the City of Chicago, *presents herewith its assignments of error and prays the court to certify the said question of jurisdiction.*"

The assignment of errors above referred to, and which were filed with said petition, asserted (Rec., pp. 390-391) that said Circuit Court erred "in failing and refusing to dismiss the bill of complaint in this cause on the final hearing, because it appeared from the records in said cause that Darius O. Mills was improperly and collusively made and joined as a complainant in this cause, for the purpose of attempting to confer jurisdiction upon a Federal Court in a case where such jurisdiction would otherwise be wanting." At the same time (Rec., p. 392) an order for an appeal was entered by the Circuit Court in the following language:

> "Now comes the defendant, the City of Chicago, and enters its motion for an appeal from the decree entered in this cause on the 27th day of February, 1906, to the Supreme Court of the United States, in accordance with the petition for said appeal, this day filed, herein; and *upon a consideration of said petition* and *upon a consideration of the assignments of errors of the said defendant, the City of Chicago:*
>
> "It is hereby ordered that an appeal be and the same is hereby granted to the said City of Chicago in this cause to the Supreme Court of the United States, *solely upon the question of the jurisdiction of this court sitting as a Circuit Court of the United States, to hear and determine this cause,* between the parties to the bill as presented therein;
>
> "And it is further ordered that leave be and

the same is hereby granted the said City of Chicago to present to this court for certification on said appeal the record in this cause within thirty (30) days from this date, and that the bond on appeal be fixed at the sum of five hundred dollars."

During the same term at which said final decree was entered, Judge Grosscup duly filed his certificate (Rec., p. 394), in which he recited:

> "In this cause I hereby certify that *at the final hearing of this cause* and at the time of the entry of the decree herein on, to-wit: the 27th day of February, 1906, the defendant, *the City of Chicago, by its counsel, objected to the jurisdiction of this court as a Circuit Court of the United States to hear and determine this cause, and asked that this court dismiss this cause for want of jurisdiction as a Federal Court;* that on the 6th day of March, 1906, and after the entry of the final decree herein an appeal was prayed by the City of Chicago to the Supreme Court of the United States *solely upon the question of the jurisdiction of this court as a Circuit Court of the United States, to hear and determine this cause,* and that the said City of Chicago filed *its petition for said appeal and its assignment of errors on said appeal,* and that on the said 6th day of March, 1906, an appeal was granted by this court in this cause to the Supreme Court of the United States solely upon the question of jurisdiction."

The certificate of said Judge Grosscup further pointed out portions of the record to be certified to this court that were necessary to the determination of said question of jurisdiction, and among other things, enumerated (Rec., p. 396):

> "48. Opinion of Judge Grosscup, filed February 23, 1906."

The opinion of Judge Grosscup, filed February 23, 1906, is set forth on pages 385 to 387 of the Record and that opinion shows that at the final hearing of this cause the only question at issue between the parties was the question of whether or not the suit in controversy was collusively brought by the complainant Mills for the purpose of conferring jurisdiction upon a Federal Court in a case where such jurisdiction was wanting. Judge Grosscup held, in said opinion, that said collusion was not established by the case made by the City of Chicago. It thus appears from the certificate of Judge Grosscup and his opinion filed on the final hearing, which is made a part of said certificate, that on the final hearing of this case but *one question was before the Circuit Court,* namely, the question as to *whether or not this suit was collusively brought,* and it further appears that on February 23, 1906, Judge Grosscup, in his opinion, decided that question, and that question alone, and determined it adversely to the contention of the City of Chicago.

It will be noted that the order allowing the appeal stated that said appeal was granted "solely upon the question of the jurisdiction of this court as a Circuit Court of the United States, to hear and determine this cause," and only those portions of the record of the court below were ordered to be sent up that were necessary to the determination of that question of jurisdiction.

Counsel contend that the certificate on the question of jurisdiction should not only show that a motion was made by the City of Chicago to dismiss this cause for the reason that a Federal Court had no jurisdiction to hear and determine this cause, but

counsel further argue that the certificate should have recited the reasons assigned by the City of Chicago in support of this motion, namely, that the suit was collusively brought.

An examination of the authorities shows that that contention is without merit. Counsel for appellee have cited a large number of authorities which they claim sustain their contention, but have omitted to review or even refer to a leading decision of this court where a certificate exactly like the one here in controversy was held sufficient. We refer to the case of *Smith* v. *McKay*, 161 U. S., 355. A bill was filed in that case in the Circuit Court of the United States for the District of Massachusetts, by McKay against Smith and others, to enjoin the defendants from using certain patented devices and to obtain an accounting for royalties alleged to be due the complainant under certain agreements executed between said parties. The subsequent proceedings in that case were those stated by this court, page 356:

> "The defendants filed an answer responding to various allegations of the bill, and averring that the complainant, so far as he had any just cause of action, had a plain, adequate, and complete remedy at law. Subsequently the defendants filed a special motion to dismiss the bill for the alleged reason that the complainant had a plain, adequate, and complete remedy at law. After argument this motion was denied. The cause was heard upon the pleadings and proofs, and at the May term, 1889, an accounting was awarded, a Master was appointed, and, on the coming in of his report, on December 22, 1891, a final decree was rendered that the complainant should recover damages in excess of the sum of $5,000 and costs of suit. From this decree an appeal was taken and allowed to this court, and

error was assigned to the action of the Circuit Court in taking jurisdiction of the bill and in not dismissing the same for want of jurisdiction."

An order was entered in the case under consideration exactly like the one in the case at bar, namely, allowing the appeal "upon the question of jurisdiction," and the contention was there made that the jurisdictional question was not specifically stated, either in the order allowing the appeal or in the certificate. This court denied the efficacy of that contention, and said, page 356:

> "It is contended on the part of the appellee that we should dismiss this appeal, because the question of jurisdiction is not properly certified to this court.
>
> "The record discloses that the defendants below appealed upon the express ground that the court erred in taking jurisdiction of the bill and in not dismissing the bill for want of jurisdiction, and prayed that their appeal should be allowed, and *the question of jurisdiction* be certified to the Supreme Court, and that *said appeal was allowed.* The certificate further states that there is sent a true copy of so much of the record as is necessary for the determination of the question of jurisdiction, and a *part of the record so certified is the opinion of the court below, in accordance with which defendants' motion to dismiss the cause for want of jurisdiction was denied. It therefore appears that the appeal was granted solely upon the question of jurisdiction, and this brings the case within the rulings in Shields* v. *Coleman,* 157 U. S., 168, and *Re Lehigh Min. & Mfg. Co.,* 156 U. S., 322."

It will be noted that the foregoing opinion of this court states that a part of the record certified to this court "is the opinion of the court below, in ac-

cordance with which defendants' motion to dismiss the cause for want of jurisdiction was denied." That is exactly the condition of the record in the case at bar. The certificate signed and filed by the circuit judge during the term at which the final decree was entered recites (Rec., p. 394):

> "This court further certifies that the following portions of the record in this cause contain all the records of this court that have any reference to the jurisdiction of this court in this cause, and the clerk of this court is directed to certify and transmit to the Supreme Court of the United States the following portions of the record in this cause on this appeal."

And among the papers so enumerated is contained the following (Rec., p. 396):

> "48. Opinion of Judge Grosscup, filed February 23, 1906."

Referring to the opinion of Judge Grosscup, filed February 23, 1906 (Rec., p. 385), we find that that opinion shows that the City of Chicago interposed a plea "that the suit was collusive—that the stockholder had not brought his suit in good faith, to enforce his rights, and those of the other stockholders, but had brought it because of a collusive understanding between him and the Gas Company, based on the fact that by reason of his citizenship in the State of California, a suit by him would lie in the United States courts, while a suit by the company would have been cognizable only in the state courts."

And a further examination of said opinion discloses that the question of collusion was the only one passed upon and determined by Judge Gross-

cup on said final hearing. It will be noted that the certificate, which was held sufficient in the *Smith* case, *supra*, was far more indefinite than the one contained in the record in the case at bar. In the *Smith* case numerous questions of law and of fact were litigated and determined and among the many questions determined was the proposition urged by the defendants that the court had no jurisdiction because complainant had an adequate remedy at law. The order allowing the appeal stated that "*the question of jurisdiction* be certified to the Supreme Court and that *said appeal was allowed.*" It will be noted that the certificate did not even recite that the jurisdiction of the Circuit Court as a court of the United States was certified to this court. The order allowing the appeal in the case at bar is far more definite, for the order here certifies "the question of the jurisdiction of the Circuit Court, sitting as a Circuit Court of the United States." If an order which allows an appeal upon the question of jurisdiction alone without distinguishing between the general jurisdiction of the Circuit Court as a court of equity and its federal jurisdiction is sufficient, then it is folly to argue that an order like the one in the case at bar, which limits the appeal solely to the question of jurisdiction to the Circuit Court as a Federal Court, should be held insufficient. It is true that in the *Smith* case, *supra*, this court, after an examination of the entire record, reached the conclusion that no federal question was involved and therefore dismissed the appeal for that reason, but this court expressly decided that the question was properly certified, and dismissed the appeal upon its merits.

A painstaking examination of every case decided

by this court in reference to the sufficiency of a certificate on the question of jurisdiction fails to show any case which either intimates or suggests that a question certified in accordance with the practice recognized in the *Smith* case, *supra*, is insufficient.

The decision of this court in *Smith* v. *McKay*, *supra*, was based upon the decision of this court in *Shields* v. *Coleman*, 157 U. S., 168. An examination of the record in the case of *Shields* v. *Coleman* shows that the practice there pursued was identical with that disclosed by this record. The order of appeal in the *Shields* case was in the following language (page 175):

> "Upon consideration of the petition for appeal to the Supreme Court of the United States filed herein by James T. Shields, Jr., as receiver of the M. & C. G. R. R. Co. under appointment by the chancery court of Hamblen County, Tennessee, it is ordered that said appeal be granted, bond therefor in the penalty of five hundred dollars having been executed and approved by the court.
>
> "It is further ordered that the petition for supersedeas be denied.
>
> "*This appeal is granted solely upon the question of jurisdiction,* and unless counsel shall agree by stipulation, filed with the clerk, in respect to the portions of the record to be transcribed and filed in the said United States Supreme Court under said appeal as prayed and granted, the appellant has leave to present the record to the court on Saturday, the 29th of July, inst., for the determination of what portions of the record shall be certified to said Supreme Court under said appeal."

And the certificate in the *Shields* case indicated the portion of the record to be sent up to this court

in precisely the same manner that was pursued in the case at bar, for this court said, in approving of the practice there pursued:

> "In the order allowing the appeal it is explicitly stated that this appeal is granted solely upon the question of jurisdiction, and the court at the same time reserves to itself the right which is subsequently exercised of determining what portions of the proceedings should be so incorporated in the record sent here for the purpose of presenting this question."

In *The Bayonne,* 159 U. S., 687, this court again approved the practice in the *Shields* case, *supra,* and in reviewing the *Shields* case, said (page 694):

> "The Circuit Court allowed the appeal by an order stating: 'This appeal is granted solely upon the question of jurisdiction,' and reserving to the court the right, which it subsequently exercised, of determining what portion of the proceedings should be incorporated into the record for the purpose of presenting that question."

It will be noted that in the cases above cited this court has determined that but two steps are necessary for the purpose of properly certifying a jurisdictional question to this court:

First: That an order be entered granting an appeal solely upon the question of jurisdiction.

Second: That the court, by a certificate made during the term at which the appeal is allowed, designate the portion of the record to be sent up, and that that record, when so presented to this court, discloses a single definite question of the jurisdiction of the court below as a Federal Court, which was there determined.

The certificate in the case at bar has every requirement heretofore pointed out by this court as necessary to properly present a question of this character to this court.

REVIEW OF AUTHORITIES CITED BY APPELLEE'S COUNSEL IN SUPPORT OF THEIR CONTENTION THAT THE JURISDICTIONAL QUESTION WAS NOT PROPERLY CERTIFIED.

As we have already pointed out, the jurisdictional question in the case at bar was certified in strict conformity with the procedure which was expressly held sufficient in the case of *Smith* v. *McKay, supra,* and we believe that case is decisive of the question here presented.

Should this court, however, desire to enter into an examination of other authorities on this question, we have made a chronological review of all the cases cited by appellee's counsel. An examination of those cases will show that the doctrine laid down in *Smith* v. *McKay, supra,* has been uniformly adhered to in the subsequent decisions of this court on that question. The only cases where this court has held that a jurisdictional question was not properly certified are cases where there was *no certificate made by the trial judge during the term,* and where the appeal or writ of error was allowed *in general terms, without limiting that appeal or writ of error to the jurisdiction of the Circuit Court as a court of the United States.*

The first case relied upon by appellee's counsel is *Maynard* v. *Hecht,* 151 U. S., 324. In that case the writ of error was allowed in general terms, without being limited to the question of jurisdiction, and said writ specified "no particular ground of error"

(p. 328), and this court there expressly stated (p. 325) that "no certificate of question for decision was applied for or granted by the court."

In *Shields* v. *Coleman*, 157 U. S., 168, the only reference to a jurisdictional question in the order for an appeal was the following (p. 175): "This appeal is granted solely upon the question of jurisdiction." This, taken in connection with the petition for an appeal, was held to be a sufficient certificate.

In the case of *The Bayonne*, 159 U. S., 687, the certificate on the question of jurisdiction was filed after the term had expired. The order for an appeal was entered in general terms in the following language: "Appeal granted," without being restricted to the question of jurisdiction. This court then pointed out that the above order was insufficient, and not in conformity with the practice recognized in the *Shields* case, *supra*, and in distinguishing the two cases this court said, respecting the *Shields* case (p. 694):

> "The Circuit Court allowed the appeal by an order stating: '*This appeal is granted solely upon the question of jurisdiction.*'"

In *Van Wagenen* v. *Sewall*, 160 U. S., 369, the appeal was in general terms, and not limited in any way, and there was no certificate on the question of jurisdiction. This court again indicated that, had the court below limited the appeal "solely to the question of jurisdiction," the case would have been properly certified. For Justice Brown, in delivering the opinion of the court, said (p. 372):

> "So, also, in *Shields* v. *Coleman*, 157 U. S., 168, where the court below, granting the appeal,

> said, *'This appeal is granted solely upon the question of jurisdiction,' and made further provision for determining what part of the record should be certified to this court under the appeal, we held this to be a sufficient certificate of a question of jurisdiction under the act.''*

In *Chappell* v. *U. S.*, 160 U. S., 499, this court said, at page 508, that there was no certificate of jurisdiction, and "the allowance of the writ of error is general, and not expressly limited to such question."

Merritt v. *Bowdoin College*, 167 U. S., 745, is a memorandum decision, and the record there discloses that there was no certificate of jurisdiction during the term, and no limitation of the appeal to the question of jurisdiction; but that after the term had expired, a certificate was filed which this court presumably held insufficient.

In *Huntington* v. *Laidley*, 176 U. S., 668, the jurisdictional question was held properly certified; and there is no intimation or suggestion in that case that a certificate like the one in the case at bar would be insufficient.

In *Arkansas* v. *Schlierholz*, 179 U. S., 598, this court said that the defenses which the court below held insufficient, and which it was sought to review by this court in an appeal on jurisdictional ground (p. 601), "went simply to the merits," and because no question of federal jurisdiction was involved, this court dismissed the appeal.

The case of *New York, etc., R. Co.* v. *Weisberg*, 191 U. S., 558, is a memorandum decision. There no certificate of jurisdiction was filed, and the writ of error was there allowed in general terms, without being limited to the question of jurisdiction.

In *Filhoil* v. *Torney*, 194 U. S., 356, there was no certificate of jurisdiction, the assignments of error were general, and not limited to the question of jurisdiction. The writ of error, this court said (p. 358), "was allowed generally and without any limitations or specification." Under the above circumstances it was held the question of jurisdiction was not properly certified in accordance with the practice recognized by this court in *Smith* v. *McKay*, 161 U. S., 355, and many other previous decisions of this court.

In *Courtney* v. *Pradt*, 196 U. S., 89, the appeal was general and not limited to jurisdictional grounds. On page 90 it was said, "No certificate of the question of jurisdiction was applied for or granted." It was there contended that inasmuch as the record disclosed a motion to remand to the state court, and its denial, therefore a question of federal jurisdiction was involved, and sufficiently presented, without a certificate or an order limiting the appeal. This court held (p. 92) that "no single and definite issue as to the jurisdiction of the Circuit Court as a Federal Court is presented," for, as the court said (p. 92), "it is true that in this case a motion to remand was made, but there was nothing to indicate that it rested on the contention that there was a lack of jurisdiction in the Federal Courts, as contradistinguished from the state courts. It did not in terms put in issue the power of the Circuit Court as a court of the United States to hear and determine the case, and we cannot be called on to say that there may not have been other grounds for the motion, or to attempt to eliminate every other ground

for the purpose of bringing the case within the first clause of Section 5."

A profoundly different condition is presented by the record in the case at bar. Judge Grosscup certified (Rec., p. 394) that "at the final hearing of this cause and at the time of the entry of the decree herein on, to-wit: the 27th day of February, 1906, the defendant, the City of Chicago, by its counsel, objected to the jurisdiction of this court as a Circuit Court of the United States to hear and determine this cause and asked that this court dismiss this cause for want of jurisdiction as a Federal Court."

And in the certificate of Judge Grosscup (Rec., p. 396) he orders the opinion, filed on the final hearing, viz.: February 23, 1906, to be sent up to this court. And in accordance with the decision of this court in *Smith* v. *McKay*, 161 U. S., 355-56, when "a part of the record so certified is the opinion of the court below" that opinion may be looked to for the purpose of determining whether a definite federal question was presented and determined. Referring to the opinion of Judge Grosscup, so filed on the final hearing (Rec., pp. 385-387), we find that but a single question was there considered and determined, namely, whether Mr. Mills' suit was brought collusively at the request of and for the benefit of The Peoples Company, for the purpose of conferring jurisdiction upon the Federal Courts in a case where such jurisdiction was otherwise wanting. And it appears that Judge Grosscup decided this question adversely to the contention of appellant, and assumed jurisdiction.

Counsel for appellee Mills also find fault because

the court certified for the consideration of this court on the question of jurisdiction, almost the entire record; and they claim that it is imposing an unnecessary burden upon this court to compel this court to examine such a voluminous record. The complete answer to the contention is that the evidence of the collusive and dishonest combination between Mr. Mills and the officers and directors of The Peoples Company is found scattered through this entire record, from the beginning to the end of this protracted litigation. Ordinarily a question of jurisdiction may be determined by an inspection of a small portion of the record. But in a case where collusive conduct is involved, and the evidence of that collusion is adroitly concealed, it is often necessary to scan the entire conduct of the parties from the beginning to the end of the lawsuit.

The collusive combination between Mr. Mills and the officers and directors of the Peoples Company began in December, 1902, shortly after the final decree had been rendered by Judge Grosscup in the *Peoples Company* case, holding that the Peoples Company had no right to contest in a Federal Court the power of the City of Chicago to pass the gas regulating ordinance in question, and the various affidavits, orders, and proceedings in both cases, from that time until the final hearing, elucidate and unfold the existence of that collusive combination between the above parties.

The motion of the City of Chicago prior to the final hearing herein, for a rule on the complainant Mills to file a fifteen million dollar injunction bond becomes an important piece of evidence on the question of collusion when it is coupled with the fact

that Mr. Meagher, although pretending to be fighting Mr. Mills at that time, goes to Mayor Dunne and complains that counsel for the City of Chicago are treating Mr. Mills unfairly in asking for such a bond.

The first answer of the Peoples Company, filed November 24, 1905, which prays that the Mills suit should be dismissed, is a persuasive piece of evidence tending to show collusion when coupled with the fact that at the same time that answer was filed Mr. Meagher, counsel for the Peoples Company, was gathering witnesses for the complainant Mills, and assisting him in making out a case against the City of Chicago and the officers of the Peoples Company. Each and all of the orders and proceedings certified to this court thus become important links in the chain of evidence tending to establish the collusive character of the conduct of Mr. Mills and the officers and directors of the Peoples Company.

We merely wish to suggest that the tendency of the decisions of this court, especially the later ones, has been to exhibit great liberality in sustaining appeals on jurisdictional grounds, where a real and substantial question of federal jurisdiction was raised in the court below, and where the order granting the appeal limited that appeal to jurisdictional questions.

III.

THE COMMENCEMENT OF A STOCKHOLDERS' SUIT, AT A TIME WHEN NO IRREPARABLE INJURY WAS BEING SUFFERED OR THREATENED, BY MR. MILLS WAS STRONG EVIDENCE OF COLLUSION.

Counsel for appellee attempt to show that the "situation as it existed in January, 1903," demanded

the immediate commencement of another suit for the purpose of declaring invalid the ordinance of October 15, 1900. If the situation was as urgent and imperative as claimed by counsel, why did Mr. Mills delay the filing of such a suit until June 8, 1903? Counsel point out the enormous loss that would have been sustained by the company if it had complied with the ordinance in question and furnished gas at seventy-five cents per one thousand cubic feet. The conclusive answer to that contention is that the board of directors had never exhibited the slightest disposition to comply with the ordinance in question. They had never refused to begin a new suit for the purpose of contesting the validity of the ordinance in question.

The minutes of the board of directors of January 29, 1903, show that the company merely decided "to defer action until the Supreme Court of the United States shall have finally decided upon the merits of the case brought by this company now pending upon appeal to that court." In other words, the officers of the Peoples Company had expressed themselves willing to begin a new suit to test the validity of the ordinance of October 15, 1900, as soon as the Peoples Company's bill, pending in this court, had been decided. Before that appeal was decided there was no necessity for a new suit, for, if the contract rights of the complainant were well taken, then there was no necessity for such a suit.

If, as this court decided, those contract rights were unfounded, then the commencement of a new suit immediately after the decision of the Peoples Company's appeal would be adequate to protect all

corporate rights. The commencement of the suit of Mr. Mills on June 8, 1903, while the Peoples Company's case was pending and undisposed of in this court, demonstrates two things:

First: That neither Mr. Guthrie nor Mr. Meagher had any confidence in the alleged contract rights that were urged in this court, but believed that such rights were unfounded, and that the company would eventually have to litigate the question of the power of the city to pass the ordinance in question.

Second: Counsel foresaw that the only pretense under which a stockholder could act would be to commence such a suit before the case of the Peoples Company had been determined by this court.

Counsel evidently foresaw that it would be preposterous to have the officers of the Peoples Company pretend that that company did not want to further contest the power of the City of Chicago to pass the ordinance in question. Such a claim would be contrary to all human experience and such procedure would be entirely too transparent. It was believed that the scheme here resorted to would carry a greater air of plausibility. It was thought that the appearance of a dispute between Mr. Mills as a stockholder and the corporate managers could best be carried on by having Mr. Mills pretend that he wanted a suit instituted in December, 1902, and that the corporate managers, while agreeing with Mr. Mills as to their desire to have the ordinance of October 15, 1900, declared invalid, yet such officers believed it wise to defer action until this court had passed upon the appeal of the Peoples Company

IV.

AS TO THE EVIDENCE ON THE QUESTION OF COLLUSION.

Counsel's contention under this head that "the bill in this suit as originally filed contained two separate and distinct grounds of jurisdiction, the one impairment of the contract right, and the other diversity of citizenship," is not tenable.

Judge Grosscup had already decided long prior to the filing of Mr. Mills' suit (Rec., p. 294), that the charter of the Peoples Company did not give that company any contract rights with reference to the price at which gas could be sold, and such was the opinion of this court in the same case. (*Peoples Gas Light and Coke Company* v. *Chicago,* 194 U. S., 1.)

It will thus appear that the alleged diversity of citizenship was the only ground of federal jurisdiction alleged in Mr. Mills' bill of complaint, as originally filed. A case of federal jurisdiction, by reason of the impairment of contractual obligations, is not made out by alleging reliance upon an instrument which does not constitute a contract. Counsel also claim that the company could have filed a bill in the United States court, praying "divisional relief" under its alleged contract right. This court never decided that the Peoples Company was entitled to divisional relief, but, assuming such to be the fact, the proposition still remains that neither Mr. Mills nor the company ever desired any divisional relief. Divisional relief would only relieve the company from complying with the ordinance in question in a small portion of the City of Chicago.

The company wanted complete relief with reference to the entire city.

It thus appears that the Peoples Company could not itself obtain any relief in a Federal Court with reference to the ordinance in question, and further, that the only way the company could get into a Federal Court was by securing a nonresident stockholder to institute a suit in behalf of the corporation and basing federal jurisdiction exclusively upon alleged diversity of citizenship.

The case of *Simpson* v. *Union Stock Yards Co.*, 110 Fed., 799, cited by counsel, instead of being an authority in their favor, tends directly to sustain our contention. That case says: "There could have been no collusion, because there can be no collusion without reason or motive, or to subserve some purpose." The court then points out that although the corporation was a citizen of the State of Nebraska, yet the right to pass the act there before the court was a federal question, which gave a Federal Court jurisdiction, regardless of the citizenship of parties. Here no federal question was involved, except the one of diversity of citizenship, which was created by the collusive arrangement between Mr. Mills and the officers of the Peoples Company.

Counsel dwell at length upon the fact that the minutes of a meeting of the board of directors of the Peoples Company, made on January 29, 1903, showed that the people of the City of Chicago were prejudiced against the Peoples Company, and that the commencement of a new suit "might tend to inflame an already hostile opinion."

The most superficial examination of the evidence in this case shows that the alleged reasons thus

spread upon the records of the corporation books were a sham and a pretense, manufactured by the board of directors for the purpose of laying a foundation for the commencement of this collusive suit. Mr. Brady, the vice-president and a director of the Peoples Company, the man who proposed the resolution against the commencement of any further litigation, and the one man who was chiefly instrumental in getting up the minutes above recited, paid Mr. Mills, on May 14, 1903, $5,000 for the expenses of Mr. Mills' suit. (Rec., p. 189.)

Counsel argue that the employment of Mr. Guthrie to represent the company in this court at the very time that he was supposed to be fighting the board of directors in the stockholder's suit was no evidence of collusion and quote the following excerpt from the opinion of Judge Grosscup, page 62:

> "Nor is it to be held that because two clients employ the same counsel respecting the same general end, they are in agreement or collusion as to the means of bringing about the end."

The above opinion of Judge Grosscup, as applied to the facts of this case, is not persuasive. We are told (page 48) by counsel for appellee that the officers and directors of the Peoples Company had been so negligent in looking after the rights of the stockholders that "by one day's violation of this ordinance the company might incur the practical forfeiture and confiscation of all its property," and we are told that Mr. Mills, who had a fortune of $2,200,000 invested in the stock of this company, took the matter into his own hands and, in good faith and without collusion, filed a bill to enjoin the directors and stockholders of the company from thus permit-

ting a destruction of the corporate property and from thus destroying Mr. Mills' entire investment, and we are told that the very officers and directors who had been charged with such palpable omission of duty and whom Mills sought to enjoin in this suit, go and retain Mr. Guthrie, the very counsel who had made the above serious charges against them, and we are told that Mr. Guthrie sees no impropriety in accepting a retainer from the very officers who had thus, by their negligence, almost ruined his client's fortune.

Much is said in the argument of appellee's counsel in reference to the amendment of the record by agreement of parties on December 5, 1903. We have already pointed out in our original brief that that amendment was made by agreement between Mr. Guthrie and Mr. Meagher and for the purpose of enabling them the more successfully to carry on the collusive stockholder's suit without running counter to pleas of former adjudication in the Peoples Company's suit.

The case of *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S., 79, is cited, which holds that the fact that the corporation agreed with the stockholders as to the unconstitutionality of the statute there under consideration was not evidence that the suit was collusive. In that case this court said that such a state of affairs only emphasized the "fact that the officers were refusing to protect the interests of stockholders." In the *Cotting* case the officers did nothing. In the case at bar the corporate officers had exercised every diligence known to the law in defeating the ordinance in question. In the *Cotting* case the officers of the corporation did nothing to

assist the stockholders in carrying on the litigation. In the case at bar Mr. Brady, the vice-president and director of the company, paid the entire expense of the stockholder's suit, Mr. Meagher, counsel for the Peoples Company, prepared the evidence and procured the witnesses and brought them into court, so that the stockholder could prove his case.

While Mr. Brady and Mr. Meagher were secretly paying the expenses and gathering the evidence, they were openly and ostensibly pretending to be hostile to the stockholder's suit. No such condition of affairs is presented in any of the cases cited by appellee's counsel, and therefore they are not in point. No case has been cited by counsel and we believe none can be found where, under the circumstances disclosed by this record, any court has held that a suit was free from collusion.

Counsel quote from the testimony of Mr. Brady (page 72), wherein Mr. Brady testified that Mr. Mills, a few days prior to May 14, 1903, approached Mr. Brady and asked Mr. Brady for a contribution of $5,000 towards paying the expenses of Mr. Mills' suit. Mr. Mills testifies (Rec., p. 186) that he don't think that he had any conversation with Mr. Brady on the subject, and he further testified (Rec., p. 182) that he got this check in an envelope with no explanation as to what it was for, and further, that he somehow got the impression that it was the expenses of his suit against the City of Chicago.

Mr. Mills' explanation is undoubtedly the correct one, for it is probably true that the officers of the Peoples Company had arranged for the payment of this $5,000 through Mr. Brady, and that Mr. Brady mailed the check to Mr. Mills without previous con-

versation about the matter, except what Mr. Mills had been told when the suit was started, namely, that the company would bear the expense.

Mr. Brady's story is wholly improbable, for, according to his theory, he had had no conversation with Mr. Mills after January 29, 1903. At a directors' meeting, January 29, 1903, Mr. Brady proposed the resolution which was there adopted, refusing to comply with Mr. Mills' request for the commencement of another suit.

Is it within the realm of any reasonable human probability that Mr. Mills would go to the one man whom he knew was opposed to any further litigation and ask that man for $5,000, being the expense of the entire suit? And isn't it almost miraculous that Mr. Brady, the man who was opposed to any further litigation with the City of Chicago, should, on the spur of the moment and without consulting with his own counsel or counsel for the company, enter into an arrangement with Mr. Mills to carry on the very litigation which he had so forcibly declared against only a short time before? Concerning testimony of this character Lord Stowell well observed, "The court must have the faith of ten men to believe it."

But counsel say it is inconceivable that Mr. Brady should have sent his personal check to Mr. Mills and thus made a record which would establish the collusive character of this suit. That argument is based upon the supposition that men who enter into unlawful and collusive arrangements invariably destroy and eliminate all evidences of their dishonest and unlawful conduct. Human experience teaches the contrary. A similar argument would prove that the railroad companies never gave rebates in viola-

tion of the Interstate Commerce Acts, else why would they have entered upon their books the evidences of their criminal conduct?

The truth of the matter is that neither Mr. Mills nor Mr. Brady expected that this matter would ever come to light. Counsel for Mr. Mills, in his direct examination, carefully and studiously avoided all reference to this $5,000 check. Mr. Brady, the man who contributed it, was kept off the stand until his presence to explain away this damaging evidence was rendered necessary by Mr. Mills' disclosure. The existence of this $5,000 check was brought to light only after a lengthy cross examination of Mr. Mills.

Counsel for appellee say that "counsel for the City of Chicago, realizing the ease with which an old gentleman could be confused," tried to entrap the witness.

The difficulty with that argument is that Mr. Mills was answering the questions propounded to him by his own counsel (Rec., p. 164) when he made the fatal admission that this suit was brought in the Federal Court for the purpose of conferring jurisdiction upon that court in a case where such jurisdiction would otherwise be wanting. His own counsel made the most drastic effort, at the time the witness answered the question, to induce him to change the answer, but the witness refused. The next day the witness was recalled by Mr. Mills' counsel (Rec., p. 195) and an attempt was there made to induce the witness to change his testimony of the previous day. An examination of the record, however, discloses that that attempt was equally unavailing. True, the witness said, in response to the

leading and suggestive question of his own counsel, "I don't think I properly understood the question," but he did not there negative the unambiguous and decisive answer on the preceding day, namely, that this suit was collusively brought.

The theory that Mr. Mills did not understand the questions propounded to him, when testifying concerning the collusive character of this suit was first suggested by Mr. Guthrie. That is made clear by the cross examination of Mr. Mills (Rec., p. 196), where he testified as follows:

> "Q. Since the hearing yesterday have you had any talk with anybody about this matter? A. I had a few minutes' talk with Mr. Guthrie.
>
> "Q. And you talked over some of your evidence yesterday, didn't you? A. Yes. This evidence that I have just been testifying to. Simply to draw my attention to it, the correctness of it."

Mr. Guthrie undoubtedly informed the witness that his admissions, made on the preceding day, were fatal to his suit and that it would have to be explained in some way, and it was undoubtedly suggested to him that the only way out of it was for the witness to say that he didn't understand the question.

We confidently submit that the evidence given by Mr. Mills to the effect that this suit was collusively brought is corroborated by the conduct of all the parties to this litigation from the beginning to the end and is in no wise inconsistent with any of the facts and circumstances disclosed by this record. In a case where the circumstances pointing to collusion are so numerous and cogent as in the case at bar, it

is extraordinary to ask a court to disregard the admissions of the party to the suit, deliberately and advisedly made when answering questions propounded by the party's own counsel.

We respectfully submit that the decree of the Circuit Court should be reversed.

JAMES HAMILTON LEWIS,
Corporation Counsel.

HENRY M. ASHTON and
DAVID K. TONE,
Special Counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 286.

CITY OF CHICAGO, *Appellant*,

vs.

DARIUS O. MILLS.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF ON BEHALF OF APPELLEE.

WILLIAM D. GUTHRIE,
JOHN J. HERRICK,
I. K. BOYESEN,
Of counsel.

Washington, December 10, 1906.

[20,245.]

[20,245]

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1906.

NO. 286.

CITY OF CHICAGO, *Appellant*,

vs.

DARIUS O. MILLS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF ON BEHALF OF APPELLEE.

This is an appeal from a decree of the circuit court of the United States for the Northern District of Illinois, Eastern Division, filed February 27, 1906, which granted a perpetual writ of injunction restraining the city of Chicago from enforcing an ordinance adopted by the city council October 15, 1900, which regulated the price of gas, and also enjoining the People's Gas Light and Coke Company from complying with the said ordinance (record, p. 387). The suit was brought by the complainant Mills as a stockholder of the People's Gas Light and Coke Company and a citizen of the State of California against said company and the city of Chicago, both corporations organized and existing under and by virtue of the laws of the State of Illinois (p. 2), and demand and compliance with the ninety-fourth equity rule and refusal of the company to sue were duly averred (pp. 17, 82–83). The bill as originally filed invoked the jurisdiction of the court below as a federal

court on two grounds : (first) that there existed a diversity of citizenship in that the complainant was a citizen of California and the defendants were citizens of Illinois (p. 2), and (secondly) that the ordinance impaired the obligation of a contract embodied in the charter of the People's Gas Light and Coke Company in contravention of section 10 of article 1 of the Constitution of the United States (pp. 14, 17). The original bill averred not only that the obligation of the charter contract of the People's Company had been impaired, but that the ordinance was illegal and void in that no power to pass it had been delegated to the city council by the legislature of Illinois (p. 14), and the relief prayed for was that the ordinance be adjudged illegal and void because in contravention of section 10 of article 1 of the Constitution of the United States, and, further, because enacted without valid legal authority from the State of Illinois (p. 17).

The ordinance in question was adopted by the city council of Chicago October 15, 1900, and it provided among other things (p. 13) that no corporation, company or companies, firm or persons manufacturing, selling, supplying or distributing gas in the city of Chicago for illuminating or fuel purposes should charge, demand or collect from any consumer more than the sum of seventy-five cents per one thousand cubic feet of gas consumed or used. The ordinance further provided that any such corporation, company, person or persons charging the city of Chicago or any citizen thereof or any consumer of gas a sum in excess of said prescribed rate should be subject to a penalty of not less than

twenty-five dollars nor more than two hundred dollars for each and every offence (pp. 13–14).

The jurisdiction of this court to hear and determine the present appeal is claimed by appellant, defendant below, under and by virtue of the first subdivision of the fifth section of the judiciary act of March 3, 1891, which provides that a direct appeal may be taken from a circuit court to this court "in any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision." The court below certified that the appeal was prayed by the appellant city of Chicago and allowed "solely upon the question of the jurisdiction of this court as a circuit court of the United States to hear and determine this cause," but without stating the specific or definite question of jurisdiction intended to be certified, whether as to diversity of citizenship, or amount in controversy, or collusion, or otherwise (record, p. 394).

During the pendency of the present litigation and since the decision of this court in a prior suit, 194 U. S. 1, the legislature of Illinois has conferred the necessary power on the city council by an act approved May 18, 1905, and the city council has adopted a new ordinance (under date of February 8, 1906) fixing the price of gas at eighty-five cents per thousand cubic feet and repealing the ordinance of October 15, 1900, although reserving all rights that may have accrued thereunder. Copies of the act of 1905 and of the repealing ordinance of February 8, 1906, are printed in the appendix to this brief.

In order to appreciate the occasion and necessity f the present suit, it is necessary to know the history o the present and the prior litigation. Shortly after t passage by the city council of Chicago of the ordinan of October 15, 1900, in question, the People's G Light and Coke Company instituted a suit in the circuit court of the United States for the Northern District of Illinois, and in its original bill of complaint alleged that the ordinance impaired the obligation of a contract embodied in its charter, denied the company the equal protection of the laws and amounted to a confiscation of its property, in violation of the Constitution of the United States (pp. 289–290), and further alleged that no power had been conferred by the legislature upon the city of Chicago to regulate the price of gas (p. 290). The contract right relied on by the People's Company was an amendment to its charter in and by an act of the legislature of Illinois of February 7, 1865, which contained a clause that the "common council of the city of Chicago shall, in no case, be authorized to compel the said company to furnish gas at a less rate than three dollars per thousand feet" (pp. 4, 282), which rate had been reduced to one dollar per thousand cubic feet (pp. 9, 284). It was alleged in the bill that the People's Company had laid an extensive system throughout the streets of the city of Chicago, and was then engaged in the business of manufacturing, selling and distributing gas at the rate of one dollar per thousand cubic feet, that its charter contract or immunity was "in full force and effect and has not been repealed, annulled or canceled" (p. 283);

that the ordinance was invalid, and that its enforcement would involve the company in irreparable damage and innumerable suits (pp. 287, 289, 290). To this bill of complaint, the defendant city of Chicago filed a general demurrer (p. 294). On the hearing, however, additional facts were developed "in answer to inquiries of the court, though not set forth in the bill" (p. 300), whereby it appeared that the People's Company had originally manufactured and distributed gas upon the west side of the city of Chicago only, "and that its south side and north side system was acquired through merger or purchase of other gas companies under the consolidation act of 1897" (*ibid*). The question thereupon presented was whether the contract exemption or immunity vested in the People's Company in and by its amended charter extended to the properties and systems acquired from other companies, and it was held by the circuit court that "the complainant, to the extent, at least, that it is successor to the merged companies, enjoys no exemption from regulation" (p. 301), and that it was not necessary to determine "whether, by the merger, the complainant has lost its right to exemption from regulation, to the extent that the consent was given to the installation of its original system . . . for the bill asks for no divisional relief" (p. 302). The circuit court also stated in its opinion that as it found that there was no contract right impaired and hence no federal question involved, its jurisdiction did not extend to the question of the power of the city council to pass the ordinance, but that such question was one primarily belonging to the state courts

(p. 301). Thereupon, the People's Company filed an amended bill (pp. 303 *et seq.*), from which it omitted any allegation or prayer for relief as to the power of the city council or as to the alleged confiscation or equal protection of the laws, and confined its allegations and its prayer for relief to the alleged impairment of its contract right, an essentially federal question clearly conferring jurisdiction. The defendant city of Chicago demurred likewise to this amended bill (p. 362) and a rehearing was had (p. 363). On such rehearing, the court adhered to its former decision, and filed an opinion which concluded as follows (p. 364):

> "The demurrer to the amended bill will be sustained and *the bill dismissed for want of jurisdiction in this court over the cause of action set forth.*"

A final order or decree was thereupon entered in the following words (p. 365):

> "It is hereby ordered, adjudged and decreed, that said demurrer be and the same is hereby sustained; *that said amended bill be and the same is hereby dismissed for want of jurisdiction* at the cost of complainant, and that defendant have execution for said costs."

An appeal was duly allowed and taken to this court and the case docketed in the office of the clerk of this court September 25, 1902 (p. 369), but the company failed and neglected to file any bill in the state court raising the question of power of the city council, and was apparently relying wholly on its appeal to this court notwithstanding that its amended bill, as stated above, did not raise any question as to power.

At this stage, Mr. Darius O. Mills, who had for nearly ten years been largely interested in the bonds

and stocks of the People's Company, evidently became anxious about the situation and consulted counsel in regard to the pending litigation, namely, Mr. William D. Guthrie of the New York bar (p. 159). In so acting, Mr. Mills "had nothing to do with the company," but went to Mr. Guthrie on his own account (p. 165). Mr. Mills was in fact the largest stockholder of the company (pp. 187, 222). His average holdings from 1893 to 1905 were shown to have varied from 1,233 shares or $123,300 par value in 1893 to as much as 26,750 shares or $2,675,000 par value in 1897, and his holdings in 1902 when he consulted counsel were 22,755 shares or a par value of $2,275,500 (p. 158). The date when Mr. Mills consulted counsel was not definitely fixed and there was some confusion in his recollection in regard to the date (see, however, p. 196), but, as the final decree dismissing the bill of the People's Company was entered on July 30, 1902 (p. 365), there can be no reasonable doubt that it must have been between that date and December 16, 1902. The testimony on this point was as follows (pp. 159–160):

> "Q. [By Mr. Guthrie]. What, if anything, did you do after hearing the result of the People's suit in regard to your interest in the People's Company? A. I remember calling on you for information. I was very much interested in the stock of the company—in my investment there, in the safety of it, and I remember calling on you to inquire or to get your opinion as to what might be the result of the litigation.
>
> Q. Do you remember at that time asking anybody, and, if so, whom, to protect your interest in the matter? . . . A. Subsequently, yes, sir.

Q. And whom did you request to advise you in connection with the matter ? . . . A. Mr. Guthrie.

Q. That is, Mr. William D. Guthrie, of the firm of Guthrie, Cravath & Henderson ? A. Yes, sir.

Q. Mr. Mills, do you remember, on or about December 16th, 1902, addressing a letter to the Board of Directors of the People's Gas Light and Coke Company ? A. I remember of addressing a letter to them, but I would not remember the date.

Q. Who prepared such letter ? A. It was prepared under your advice."

The letter was read in evidence, and is as follows (p. 160):

" NEW YORK, December 16, 1902.

To the Board of Directors of the People's Gas Light and Coke Company:

Dear Sirs: I believe you are aware that I am, and for upwards of five years last past have been, the largest stockholder of the People's Gas Light and Coke Company, and, of course, as such stockholder, I am vitally interested in the questions which have arisen under the ordinance of the common council of the city of Chicago reducing the price to be charged for illuminating and fuel gas to 75 cents per thousand cubic feet.

I have caused to be submitted to my counsel the proceedings in the suit instituted in the circuit court of the United States at Chicago for the purpose of restraining the enforcement of this ordinance on the ground that it constituted an impairment of the obligation of the contract contained in our charter, together with a copy of the opinions of Judge Grosscup, and have informed such counsel that the case has been appealed to the Supreme Court of the United States, and will probably not be reached for argument until some time during the year 1904.

I am advised by counsel that the interests of the

People's Gas Light and Coke Company may not be adequately protected by the pending litigation for the following reasons:

First. That the bill in the pending suit was dismissed for want of jurisdiction in the circuit court of the United States for the Northern District of Illinois, and that in view of such disposition the Supreme Court of the United States may limit the point which it will consider on the present appeal to the naked question of jurisdiction.

Secondly. That the present suit does not involve any question as to the power of the common council of the city of Chicago to reduce the charges of our company.

In view of the vital interest to all stockholders of these questions, I hereby request that you will cause to be instituted at the earliest practicable moment a new suit against the city of Chicago or otherwise, for the purpose of preventing the enforcement of this ordinance upon the ground that it impairs our charter contract, and that the common council had no power to pass it. The facts stated in the amended bill of complaint in the pending suit I am advised fully show the necessity for a resort to equity for the protection of our rights.

It seems to me that the importance of this matter to the company and its stockholders cannot be exaggerated. If the ordinance is valid, the revenue of the company will be decreased one-quarter of the present gross income and very much more than this of the net income.

Yours truly,

D. O. MILLS."

This letter of December 16, 1902, so addressed to the People's Company by Mr. Mills was submitted to the company's counsel, Mr. James F. Meagher of Chicago, for his advice, and it appears that he came to New York and had

two or three conferences with Mr. Mills' counsel, Mr. Guthrie, in regard to the request that a new suit should be brought (p. 255). The testimony shows that there was a radical difference of opinion between counsel (pp. 255, 263). Mr. Guthrie, on the one hand, urged that this court on the then pending appeal in the case of the People's Company "might not decide anything but the question of jurisdiction and would not decide the question of power or the charter contract" (p. 255), that delay in securing an adjudication upon the questions involved would not be to the advantage of the company, and that he thought suit should be brought at once (p. 256). On the other hand, Mr. Meagher was of opinion that additional litigation by the People's Company at that time might be prejudicial to its interests, that a clear error had been committed in dismissing the bill for want of jurisdiction, and that it would be a tactical advantage to reverse the prior judgment (pp. 255–256), and he notified Mr. Guthrie that he would advise the board to decline Mr. Mills' request (p. 256).

Mr. Mills' letter of December 16, 1902, was submitted to the board of directors of the People's Company at a meeting held January 29, 1903, and the board under advice of counsel declined to institute a new suit (pp. 204, 228, 256, 277–279). The advice so given was by Mr. Meagher and concurred in by his associates Judge Moran and Judge Sears (p. 257). The grounds upon which this advice was based were fully set forth in the testimony as follows (pp. 255-257):

> "Q. And what, according to your best recollection, was the substance of the conversation between you

and Mr. Guthrie on the subject of having a new suit brought by the company in view of the dismissal of the other suit? . . . A. I was opposed to the company bringing the suit, and I think, as I remember it, you [*i. e.* Mr. Guthrie] were very firm in the position that another suit should be instituted and we disagreed about it.

Q. Do you remember what Mr. Guthrie stated as the reason why, in his opinion, a new suit should be brought? . . . A. Well, I thought that the questions which would be raised in a new suit were already raised in the pending suit. Judge Moran agreed thoroughly with me on that proposition. Judge Sears also agreed with me on the proposition. I think, Mr. Guthrie, your position was that the Supreme Court might not decide anything but the question of jurisdiction and would not decide the question of power or the charter contract. I think I wanted the advantage of reversing Judge Grosscup; that I felt confident that we could reverse him and that I felt if he were reversed it would be to the great advantage of the People's Company and that it would be to the benefit of the company in its dealings with the city, and with the people of the City of Chicago. That, I think, as I remember, were the differences between us. I believe you made the point that delay might not be to our advantage and that you thought this suit should be brought at once; and I said, 'I don't think it should be because it might be the equivalent of abandoning our appeal, and in any event if we brought another suit the point would be made in the Supreme Court of the United States that we had no confidence in our appeal as was evidenced by the fact that since perfecting it we had commenced another suit in another court.' I think there were times when the argument became a little heated.

Q. Did you communicate to Mr. Guthrie at that

time the views of your associates, Judge Moran and Judge Sears? A. I think I did. I know we went over it very thoroughly.

Q. And did you advise Mr. Guthrie of the substance of the opinion that you intended to express to the Board of Directors upon the subject? A. I think at the last time I talked with you. I think the last time I said to you that I should advise the Board not to comply with the request.

Q. Do you remember a meeting of the Board of Directors of the People's Gas Light and Coke Company, held in the City of New York on January 29th, 1903? A. I do.

Q. Who was present at that meeting? A. The full Board of Directors and myself. I will give you the names if you wish: Mr. Billings, Mr. Brady, Mr. Knapp, Mr. Ferguson and Mr. Flower and myself.

Q. Will you please state what occurred at that meeting according to your best recollection? A. As I remember the circumstances, the request of Mr. Mills was read to the Board. I stated that it had been forwarded to me by either Mr. Billings or Mr. Knapp; that I had examined the question with great care, not merely alone, but in conjunction with Judge Moran and Judge Sears; that I had gone to Judge Moran s office at least twice in relation to it and he had been to our office once. Judge Sears, my partner and I had been over it a number of times. I think I stated to the Board that I had been in conference or at least in negotiation with Mr. Guthrie about it and that after a thorough examination of the question I felt constrained to advise the Board not to comply with the request, because, in my opinion, we would be sure to reverse Judge Grosscup.

That would be a great tactical advantage at least. That I thought, furthermore, it would be unwise from the standpoint of policy to institute another suit, because the public would at once say that we

were simply trying to hamper and complicate the situation by numerous suits. I said also that if we were to bring the suit I felt the fact would certainly get to the Supreme Court of the United States on the hearing of our appeal, and I thought it would at least in some degree prejudice us or might affect us in that Court, and I therefore advised against the institution of the suit and urged as strongly as I knew how that Mr. Mills' request be not complied with.

I stated to the Board that the opinion was not alone my opinion, but was the opinion of Judge Moran and of Judge Sears.

We have no doubt that it would be a mistake to comply with Mr. Mills' request, and I advised against it. At that time we had the *quo warranto* suit pending, as I remember. There was also pending what were known as the Hale cases. . . .

The Hale suits briefly were instituted for the purpose of compelling the People's Gas Light and Coke Company to sell gas for less than one dollar a thousand in the city of Chicago. . . .

I called attention to that fact, that an injunction had been granted, issued out of the circuit court of the United States, which protected the company pending the appeal, and from every consideration that I was able to give the matter, I thought it would be unwise to commence another suit as requested by Mr. Mills."

Acting upon this advice, the request was declined (pp. 204, 228, 274–278, 277–279) and the company sent an answer to Mr. Mills as follows (p. 161) :

"NEW YORK, January 29, 1903.

D. O. MILLS, Esq., 35 Wall Street, New York.

Dear Sir : I beg to acknowledge receipt of your letter of December 16, 1902, which was submitted to the Board of Directors of the Company, and after conference with the counsel to the Company, the Board

felt constrained under all the circumstances to decline to institute any further litigation at the present time, and their action was evidenced by the following resolution, which I am directed to communicate to you, viz.:

'*Resolved*, that this company declines to accede to the request of Mr. D. O. Mills, contained in his communication to the Board of Directors of this company, dated the 16th day of December, 1902, for the reason that this board believes that for this company to institute further legal proceedings to contest the legality of the ordinance adopted by the common council of the city of Chicago, October 15th, 1900, would excite public prejudice against this company, which at the present time it is deemed of great importance to avoid.

Be it Further Resolved, the secretary be instructed to notify Mr. Mills of the action of this board, at this meeting, and send to him a copy of this resolution.'

Yours very truly,

H. W. OLCOTT.

Assistant Secretary."

The delay in answering was shown to have been due to the fact that three of the five directors of the People's Company, Mr. Knapp, Mr. Billings and Mr. Brady were absent in Europe on business and that no meeting of the board could be had in their absence because of the want of a quorum (pp. 203, 227, 255, 256).

Upon the refusal of the directors of the People's Company to file a new bill, the question was submitted to the stockholders at the annual meeting held February 10, 1903, in a proposed resolution directing the institution of the suit, but the resolution was defeated (pp. 145–146, 273–276). Thereafter and on June 8, 1903, Mr. Mills filed the original bill in the present suit (p. 1).

It appeared from the testimony that the suit was brought by Mr. Mills without any agreement or understanding whatever with the company, and solely for the protection of his individual interests as the largest stockholder in the company (pp. 164, 187, 222), an interest amounting at that time to over $2,200,000 (p. 158); that after he acquired knowledge from the public prints of the result of the litigation between the city and the People's Company, he asked the advice of independent counsel of his own volition (pp. 159, 174); that upon the refusal of the company to take the action which he demanded, he personally verified the original and amended bills of complaint, executed a bond and indemnified the surety company which gave the injunction bond (pp. 162, 163); that the suit was conducted at his own expense (p. 163) except so far as other stockholders similarly situated might choose to contribute (p. 181); that the suit was not brought at the request of the People's Company (p. 164); that he had no agreement with the People's Company in regard to the institution of the suit or in regard to the expense that might be incurred in prosecuting it (pp. 164, 180, 181, 222); that he had no agreement of any kind, directly or indirectly, with the People's Company or anyone else to indemnify him personally against the expenses and costs of the suit (pp. 164, 222, 229, 240, 261); and, as he phrased it on his cross-examination: "I had nothing to do with the company. I went [*i. e.*, to counsel] on my own account" (p. 165).

The defendant city of Chicago on July 6, 1903, filed a demurrer to the original bill of Mr. Mills, and such demurrer came on to be heard by the court below on December 5, 1903 (pp. 1, 47, 48). On this hearing, the complainant urged as alleged in his bill (p. 17) that the decree in the prior suit did not constitute *res adjudicata* because the dismissal had been for want of jurisdiction and that therefore a new suit would lie even on the question of the alleged contract right, whereupon the court said: "'Well, that is a mistake,' referring to the decree; 'I did not intend to enter that decree, that is wrong, that decree ought to be amended so as to correctly express what the court intended to do,' and after some discussion the record was amended . . . to show that the court dismissed the bill on the merits as to the contract set up in the bill, being the charter of the People's Company, but without prejudice to the right to bring any other suit," etc. (pp. 259–260). Thereupon the People's Company and the city of Chicago entered into the following stipulation, a copy of which was filed in this court as part of the record in the case of *People's Gas Light & Coke Company* v. *Chicago*, 194 U. S. 1, as will appear by the files in the office of the clerk of this court to which reference is prayed:

"United States Circuit Court for the Northern District of Illinois, Northern Division.

THE PEOPLES GAS LIGHT AND COKE COMPANY	No. 25780
vs.	
CITY OF CHICAGO.	

It is hereby stipulated and agreed by and between

the parties in the above-entitled suit that the decree heretofore entered in the above-entitled suit on or about the thirtieth day of July, 1902, in the absence of the Honorable Peter S. Grosscup, circuit judge, before whom the case was heard and argued, and which decree does not correctly recite the judgment as intended by the court, be amended *nunc pro tunc* as of said July 30th, 1902, so as to strike therefrom, after the word 'dismissed,' the words 'for want of jurisdiction,' and to insert in lieu thereof the words 'upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois;' that an order or decree so amending and correcting said decree be forthwith entered without prejudice to any of the proceedings heretofore had or to the appeal from said decree of July 30th, 1902, now pending in the Supreme Court of the United States, and that such proceedings be had in said Supreme Court as shall effectuate the amendment of said decree *nunc pro tunc* as fully to all intents and purposes as if contained in the original record now in said Supreme Court, so that the appeal may be heard and decided on the decree as now amended *nunc pro tunc*.

It is also hereby stipulated and agreed that the opinion of the court on rehearing be likewise amended *nunc pro tunc*, so as to omit therefrom, after the word 'dismissed' the words 'for want of jurisdiction in this court over the cause of action set forth," and to insert in lieu thereof the words, 'upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois," and

that an order be entered amending the record accordingly.

Chicago, December 5, 1903.

SEARS, MEAGHER & WHITNEY,
Solicitors for Peoples' Gas Light & Coke Company.
GRANVILLE W. BROWNING,
Solicitor for the Defendant, The City of Chicago.

(Endorsed :) Filed Dec. 5, 1903. Marshall E. Sampsell, clerk."

The order then entered reads as follows (p. 370):

"On reading and filing the annexed consent and stipulation to the entry of this order which is hereby made a part hereof, It is Ordered and Decreed that the final order and decree heretofore entered July 30, 1902, in the above-entitled suit now pending on appeal to the Supreme Court of the United States, be and the same hereby is amended *nunc pro tunc* as of said July 30, 1902, so as to state the true decision of the court by striking therefrom after the word 'dismissed' the words, 'for want of jurisdiction,' and inserting in lieu thereof the words 'upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois' and that the record on appeal be and the same hereby is amended accordingly, so that said appeal may be heard and decided on the decree as now amended *nunc pro tunc*."

In view of this amendment of the decree *by consent of the People's Company and the city of Chicago*, a motion was made in this court in the pending appeal and its attention called to the proceedings correcting the decree, and the decree as amended was duly brought before it and made part of the record.

On such appeal when heard in January, 1904 (*People's*

Gas Light & Coke Co. v. *Chicago*, 194 U. S. 1), this court reviewed the details and merits of the alleged charter contract, and it was held, affirming the court below, that the asserted contract immunity, even if conceded, did not extend to so much of the system of the People's Gas Light and Coke Company as passed to it as a consolidated company from companies not possessing such immunity in their own right (194 U. S. at p. 17); but this court did not rule upon the question of the power of the city council to pass any such ordinance in view of the fact that the decree as it stood at the time the case was considered by this court had been amended *by consent*. The court will recall the importance attached on the argument to this amendment *by consent* and to the reservation therein of the right to institute any other suit in respect to the question of power. Commenting on this phase, Mr. Chief Justice Fuller, speaking for the court, said (194 U. S. at p. 8):

> "Subsequently it was stipulated and agreed by and between the parties that the decree as entered did not correctly recite what was intended by the court, and that it should be amended by striking out the words 'for want of jurisdiction,' and inserting in lieu thereof the words 'upon the merits as to the alleged contract rights of the complainant, but without prejudice to any other suit in respect to the question of power of the city council under the laws of the State of Illinois.' An order was then entered by the court, amending its previous decree *nunc pro tunc* in the particulars named."

And at p. 14, in answer to the contention on behalf of the People's Company that the existence of the federal question as to the alleged impairment of a contract war-

ranted the court in proceeding to decide any other questions involved, such as that of the power of the city council, the court said :

> "The decree, as it stands, *amended by consent*, in terms reserved the question to be raised in some other appropriate suit in a proper court. In these circumstances we are constrained to decline the consideration of that question so far as it relates to the contention that power to regulate was conferred by the general law of Illinois of 1871-2, providing for the incorporation of cities and villages under which the city of Chicago as now constituted was incorporated."

The court will also recall that the fact of the pendency of the present suit was stated on the argument and that a copy of Circuit Judge Grosscup's opinion in this suit overruling the demurrer of the city of Chicago (record, p. 49 ; 127 Fed. Rep. 731) was subsequently filed and submitted to this court.

Thereafter, in view of the decision of this court (194 U. S. 1) affirming the decree in the suit of the People's Company, an amended bill was filed in the present suit eliminating the federal question as to the impairment of the alleged contract right and confining the case to the question of the power of the city council of Chicago under the laws of Illinois (pp. 75–84). On February 11, 1905, the city of Chicago filed a demurrer to this amended bill (pp. 91-92), which demurrer was overruled on August 1, 1905 (p. 93), and thereupon the city filed an answer (pp. 94 *et seq.*), which put in issue the allegations as to diversity of citizenship, as to the value of the matter in dispute represented by the complainant's interest in the company, as to the absence of collusion and as to the

absence of a remedy at law (pp. 94, 97, 99, 100, 102). A replication having been filed (p. 106), a special examiner was appointed to take testimony under rule 67 (pp. 113–114), before whom the witnesses appeared and testified (pp. 140 *et seq.*). Upon the completion of the taking of the oral testimony, the case was brought on for final hearing. On such final hearing, the learned Circuit Judge filed an opinion in which the testimony was reviewed, the facts found in favor of the complainant, and a decree directed to be entered enjoining the enforcement of the ordinance on the ground that in October, 1900, the city council of Chicago had no power to pass the same (pp. 385–386), and adjudging that the suit was of a civil nature in which the matter in dispute, exclusive of interest and costs, exceeded the sum or value of two thousand dollars, that there was a controversy between citizens of different states, that the requirements of equity rule 94 had been duly complied with, and that the suit was not a collusive one (p. 387). From this final decree, the defendant city presented a petition of appeal stating that "the circuit court erred in taking jurisdiction of the bill and in not dismissing the bill in this cause for want of jurisdiction" (p. 389). The appeal was thereupon allowed "solely upon the question of the jurisdiction of this court sitting as a circuit court of the United States, to hear and determine this cause, between the parties to the bill as presented therein" (p. 392). Thereafter, the court made a certificate to the effect that at the final hearing the defendant city had objected to the jurisdiction of the court "as a circuit court of the United States to hear

and determine this cause" and had prayed an appeal "solely upon the question of the jurisdiction of this court as a circuit court of the United States to hear and determine this cause" (p. 394). Other than these statements, nothing was shown in the decree, petition for appeal, order allowing appeal or certificate to indicate what specific or definite question of jurisdiction was certified or intended to be certified, and this court is now asked to determine from the twelve assignments of error (p. 390) and from the whole record, pleadings, testimony and exhibits as the evidence heard, received or considered by the court below "at any time on the question of jurisdiction" (pp. 394–396) what precise or definite question of jurisdiction was intended to be certified for its review.

The brief now filed in this court on behalf of the city of Chicago not only discusses the jurisdiction of the court below as a court of the United States, but likewise its jurisdiction as a court of equity to entertain any bill filed by a stockholder upon the refusal of the managers and stockholders of the company to sue. Thus, it is insisted that the company rightfully refused to comply with Mr. Mills' request for a new suit and that he as a stockholder should have abided by the judgment of the directors (p. 60). The suggestion also is urged that no situation involving threatened irreparable damage, etc., was shown which would justify the interposition of a court of equity at the suit of a stockholder (pp. 61, 65). It may, therefore, be appropriate to mention here that the allegations of the original and amended bills (pp. 14–16,

80–82) and the facts proved (pp. 200–202, 224) clearly established the jurisdiction in equity to avoid a multiplicity of suits, to conserve the public interests, and to avoid irreparable injury to the company and its stockholders. *Donovan* v. *Pennsylvania Company*, 199 U. S. 279, 305. It may also be appropriate to state that the decision of the court below on the merits, following its prior decision (p. 49 ; 127 Fed. Rep. 731) to the effect that the city of Chicago was without power to pass the ordinance of October 15, 1900, because no such power had then been delegated to it by the legislature, was based upon a long and unbroken line of decisions, *e. g.* : *Laugel* v. *City of Bushnell*, 197 Illinois, 20, 27 ; *Coquard* v. *Village of Oquawka*, 192 Illinois, 355, 365 ; *Wice* v. *C. & N. W. Ry. Co.*, 193 Illinois, 351, 353 ; *Wilkie* v. *Chicago*, 188 Illinois, 444, 450 ; *Kiel* v. *City of Chicago*, 176 Illinois, 137, 141 ; *City of Chicago* v. *Blair*, 149 Illinois, 310, 318 ; *Smith* v. *McDowell*, 148 Illinois, 51, 62 ; *Seeger* v. *Mueller*, 133 Illinois, 86, 94 ; *City of Cairo* v. *Bross*, 101 Illinois, 475, 478 ; *St. Louis* v. *Western Union Telegraph Co.*, 149 U. S. 465, 471 ; *Barnett* v. *Dennison*, 145 U. S. 135, 139 ; *Atkin* v. *Kansas*, 191 U. S. 207, 220 ; *Citizens St. Ry.* v. *Detroit Railway*, 171 U. S. 48, 54 ; *City of St. Louis* v. *Bell Telephone Co.*, 96 Mo. 623, 629 ; *State ex rel Garner* v. *Missouri Telephone Co.*, 189 Mo. 83, 103 ; *State* v. *Sheboygan*, 111 Wisc. 23, 38, 39 ; *In re Pryor*, 55 Kansas, 724, 728, 729 ; *Lewisville Natural Gas Co.* v. *State*, 135 Indiana, 49, 52 ; *Schroeder* v. *Gas & Water Co.*, 20 Pa. Super. Ct. 255, 259.

I.

As to the act of 1875 and questions arising thereunder and under the ninety-fourth rule in equity.

It will be assumed that all questions of equity jurisdiction, such as whether or not the board of directors ought to have complied with the request to sue or whether circumstances existed justifying a resort to equity will not be considered on this appeal. They involve simply inquiries as to general equity jurisdiction applicable alike to state and federal courts, and are not within the scope of the power of this court to review on this appeal. *Board of Trade* v. *Hammond Elevator Co.*, 198 U. S. 424, 432; *Courtney* v. *Pradt*, 196 U. S. 89, 91; *Bache* v. *Hunt*, 193 U. S. 523, 525; *Louisville Trust Co.* v. *Knott*, 191 U. S. 225, 232; *Smith* v. *McKay*, 161 U. S. 355, 357. The only question which this court will consider is as to the jurisdiction of the court below as a court of the United States and not any question as to its jurisdiction as a court of equity. In the final analysis, therefore, even if any question of jurisdiction be found to have been duly and definitely certified to this court, the inquiry is not whether the board of directors and the stockholders wisely or wrongfully refused to institute a suit in January, 1903, or whether under general principles of equity jurisdiction the complainant as a stockholder was entitled to sue on behalf of himself and all other stockholders to protect the company's interests, but whether the refusal to sue, as to which no dispute exists, was sham and colorable and merely in pursuance of a collusive agreement between the complainant and the company for the

purpose of conferring jurisdiction on the court below in a case of which it would not otherwise have cognizance.

Stated in somewhat different language, the question whether, in the absence of collusion, the record shows that the complainant failed to establish his right as a stockholder in the People's Company to maintain his bill against the city and the People's Company, is not a question of the jurisdiction of the court as a federal court, but relates only to the general authority of the court as a judicial tribunal. In the absence of collusion, the right of a stockholder to invoke the jurisdiction of a circuit court of the United States on the ground of diverse citizenship between himself and his corporation, in a suit founded upon rights which might have been asserted by the corporation, is not open to question. That question was explicitly foreclosed by the decision of this court in *Doctor* v. *Harrington*, 196 U. S. 579, 587. The appellant in its brief asks the court to determine this question of the right to maintain a stockholder's bill upon general principles administered by courts of equity (pp. 60 *et seq.*). Indeed, the principles invoked are not even drawn from the decisions of the federal courts alone, but decisions of the state courts are also referred to, thus demonstrating that the question submitted is a question of equity jurisdiction applicable to the state courts as well as to the federal courts. This is not such a question of jurisdiction as may be certified to this court under the fifth section of the act of 1891. In *Board of Trade* v. *Hammond Elevator Co.*,

198 U. S. 424, 432, Mr. Justice Brown, speaking for the court, said:

> "The proper construction of this section has been the subject of frequent consideration in this court, and it has been definitely settled that it must be limited to cases where the jurisdiction of the federal court, as a federal court, is put in issue, and that questions of jurisdiction applicable to the state courts, as well as to the federal courts are not within its scope."

The rule is based upon the reasoning in the *World's Columbian Exposition* case, 18 U. S. App. 42, where Mr. Chief Justice Fuller pointed out that if the power of the circuit court to hear and determine the cause was shown—as in the case at bar by reason of the original federal question under the contract clause or by reason of diversity of citizenship—but the defendant contended that no case had been made properly cognizable in a court of equity, the true objection was the want of equity and not the want of power, and that therefore the jurisdiction of the circuit court as a federal court could not be said to be in issue within the intent and meaning of the act of Congress. Hence, if the requisite federal question or diversity of citizenship exist, and the only question is as to the right of the complainant stockholder to maintain the particular bill in equity, the jurisdiction challenged is that of the circuit court as a court of equity and not as a court of the United States.

The question as to collusion arises (1) under the fifth section of the act of March 3, 1875, c. 137, 18 Stat. 470 472, and (2) under the ninety-fourth rule in equity.

(1) The act of 1875 provides as follows:

> "that if, in any suit commenced in a circuit court or removed from a state court to a circuit court of the United States, *it shall appear to the satisfaction of said circuit court*, at any time after such suit has been brought or removed thereto, . . . that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said circuit court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed."

This provision of the act of 1875 was not superseded by the judiciary act of 1887–1888, and is still in force. *Steigleder* v. *McQuesten*, 198 U. S. 141, 142–143, and cases cited.

The court has uniformly adhered to the rule of construction of this act of 1875 declared in *Barry* v. *Edmunds*, 116 U. S. 550, 559, where Mr. Justice Matthews said:

> "In making such an order, therefore, the circuit court exercises a legal and not a personal discretion, which must be exerted in view of the facts sufficiently proven, and controlled by fixed rules of law. It might happen that the judge, on the trial or hearing of a cause, would receive impressions amounting to a moral certainty that it does not really and substantially involve a dispute or controversy within the jurisdiction of the court. But upon such a personal conviction, however strong, he would not be at liberty to act, unless the facts on which the persuasion is based, when made distinctly to appear on the record, create a legal certainty of the conclusion based on them. Nothing less than this is meant by the statute when it provides that the failure of its jurisdiction,

on this account, 'shall appear to the satisfaction of said circuit court.'"

See also *Deputron* v. *Young*, 134 U. S. 241, 252; *Wetmore* v. *Rymer*, 169 U. S. 115, 122; *Put-in-Bay Water Works &c. Co.* v. *Ryan*, 181 U. S. 409, 431.

In view of this statute, the question of collusion, as a question of the jurisdiction of the circuit court, is whether it distinctly appeared "to the satisfaction of said circuit court" that the suit was a collusive one. In the case at bar this fact clearly did not so appear. On the contrary, the record shows that the court explicitly found and recited in its final decree the fact "that the suit is not a collusive one to confer on a court of the United States jurisdiction of a cause of which it would not otherwise have cognizance" (record, p. 387). Diverse citizenship appearing by proper averments in the bill and proofs, the jurisdiction of the court to determine the issue of collusion raised by the answer cannot be and is not questioned. If the court had found that this suit was a collusive one, instead of the contrary, collusion would then have "appeared to the satisfaction of the circuit court," and the further action of that court might have raised a question of jurisdiction under the act of 1891. So, also, if the court had found and certified facts from which collusion could fairly be said to have distinctly appeared as a matter of legal certainty, there might have been a question whether collusion appeared or ought not to have appeared "to the satisfaction of the circuit court," subject to review by this court, as a question of the jurisdiction of the court within the meaning of the act of 1891. But the issue of collusion was a

question of fact, which the court had jurisdiction to determine under the act of 1875, and its finding on the evidence ought not to be set aside. Having determined that question as it did, it had unquestionable jurisdiction on the ground of diverse citizenship to proceed to a final decree. *Doctor* v. *Harrington*, 196 U. S. 579, 588.

In *Put-in-Bay, etc., Co.* v. *Ryan*, 181 U. S. 409, 428, there was an appeal from a circuit court solely upon the question of jurisdiction, and it was certified—

> "that said appellant denied the jurisdiction of the court over said cause and contended that the court was without jurisdiction upon the grounds that the amount in controversy was in truth and in fact much less than the sum of two thousand dollars ($2,000), exclusive of interest and costs, and that the case had been fraudulently and collusively instituted by the parties thereto for the purpose of creating the appearance of jurisdiction not in fact existing."

Mr. Justice Shiras, who delivered the opinion of the court, referring to the fifth section of the act of 1875, said (pp. 430, 431, 434):

> "The mere denial that the materials sold by the complainant to the railway company were of the value alleged in the bill did not, of itself deprive the court of jurisdiction. Thereby was presented a question of fact into which the court had jurisdiction to inquire. Within the letter of the statute there was a controversy between citizens of different states, in which the matter in dispute was over the sum or value of two thousand dollars. . . .
>
> "It is not clearly shown in this record that, at any time after the suit was brought, it was made to appear, *to the satisfaction of the circuit court* [italics by the court] that the suit did not really and substantially involve a dispute or controversy properly within the

> jurisdiction of said circuit court. On the contrary, it appears that the circuit court was not so satisfied. . . . The case is before us only on the question whether the circuit court had jurisdiction to entertain the said cause and render the decrees so appealed from, and this we answer in the affirmative and direct the appeal to be dismissed."

(2) Nor does any issue of fact arising under denials of due compliance with the ninety-fourth rule involve any question as to the jurisdiction of a circuit court as a court of the United States. The point was presented to the court for decision in *Illinois Central Railroad Co.* v. *Adams*, 180 U. S. 28, 33, where the defense was interposed that the ninety-fourth equity rule as to collusive stockholders' suits had not been complied with, but the court held (p. 34)—

> "that the defense set up under the ninety-fourth rule does not raise a question of jurisdiction, but of the authority of the plaintiff to maintain this bill."

The reasons for so holding were stated in the opinion delivered by Mr. Justice Brown as follows (pp. 34, 35):

> "Jurisdiction is the right to put the wheels of justice in motion and to proceed to the final determination of a cause upon the pleadings and evidence. It exists in the circuit courts of the United States under the express terms of the act of August 13, 1888, if the plaintiff be a citizen of one state, the defendant a citizen of another, if the amount in controversy exceed $2,000, and the defendant be properly served with process within the district. Excepting certain *quasi* jurisdictional facts, necessary to be averred in particular cases, and immaterial here, these are the only facts required to vest jurisdiction of the controversy in the circuit courts. . . . The right to

bring a suit is entirely distinguishable from the right to prosecute the particular bill. One goes to the maintenance of any action; the other to the maintenance of the particular action. Thus it was held in the case of *Smith* v. *McKay*, 161 U. S. 355, and *Blythe* v. *Hinckley*, 173 U. S. 501, that it was not a question of the jurisdiction of the circuit court that the action should have been brought at law instead of in equity. The question in each case is whether the plaintiff has brought himself within the language of the jurisdictional act, whatever be the form of his action, or whether it be at law or in equity. *The objection that plaintiff has failed to comply with the ninety-fourth rule may be raised by demurrer, but the admitted power to decide this question is also an admission that the court has jurisdiction of the case.*"

The right of a stockholder to invoke the equity jurisdiction of the federal courts in any case is also governed by section 723 of the Revised Statutes, which provides that "suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law." This issue was also raised by the answer of the city to the amended bill (p. 99). But the question whether the remedy should be at law or in equity is not a question of federal jurisdiction within the meaning of the act of 1891, and it has been explicitly so decided by this court. *Smith* v. *McKay*, 161 U. S. 355, 357, and cases cited *supra*.

II.

There is no proper certificate showing what specific or definite question of federal jurisdiction in issue in the court below was intended to be certified to this court.

This appeal having been taken under section 5 of the judiciary act of March 3, 1891, 26 Stat. 827, as of a

case "in which the jurisdiction of the court is in issue," it is subject, as we have already seen, to the provision that "in such a case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision."

Certain propositions concerning the jurisdiction of this court in cases of this kind have been definitely settled. A formal certificate of the jurisdictional question by the court below, or an equivalent therefor, is an essential to the exercise of jurisdiction by this court. *Maynard* v. *Hecht*, 151 U. S. 324, 328; *Courtney* v. *Pradt*, 196 U. S. 89, 91; *Trenchard* v. *Kell*, 202 U. S. 613. In the absence of a sufficient formal certificate, its equivalent in an equity case must be found, if at all, in the explicit terms of the final decree or of the order allowing the appeal. *Huntington* v. *Laidley*, 176 U. S. 668, 676; *Arkansas* v. *Schlierholz*, 179 U. S. 598, 601; *Courtney* v. *Pradt*, 196 U. S. 89, 91. As Mr. Justice Gray said in the first mentioned case:

> "This may appear in either of two ways; by the terms of the decree appealed from and of the order allowing the appeal; or by a separate certificate of the court below."

Such certificate or its equivalent "must distinctly and unequivocally show that the court below sends up for consideration a single and definite question of jurisdiction." *Huntington* v. *Laidley*, 176 U. S. 668, 676; *Courtney* v. *Pradt*, 196 U. S. 89, 92. It is insufficient to certify the question of jurisdiction generally "without defining or indicating any specific question of jurisdiction." *Chappell* v. *United States*, 160 U. S.

499, 508–509; *Filhiol* v. *Torney*, 194 U. S. 356, 358–359; *The Bayonne*, 159 U. S. 687, 693. There must also be a statement of a *definite* question; that is, "the precise question, clearly, fully and separately stated. No mere suggestion that the jurisdiction of the court was in issue will answer." *Shields* v. *Coleman*, 157 U. S. 168, 177; *Chappell* v. *United States*, 160 U. S. 499, 508; *Arkansas* v. *Schlierholz*, 179 U. S. 600, 601. The question of jurisdiction must also have been so "plainly and distinctly" specified "that no further examination of the record would be necessary." *Van Wagenen* v. *Sewall*, 160 U. S. 369, 373. The question thus sent up must be a question of *federal* jurisdiction, that is, of "the jurisdiction of the circuit court as a court of the United States, and not in respect of its general authority as a judicial tribunal" or a court of equity. *Courtney* v. *Pradt*, 196 U. S. 89, 91, and cases cited; *Illinois Central Railroad Co.* v. *Adams*, 180 U. S. 28, 34–35; *Board of Trade* v. *Hammond Elevator Co.*, 198 U. S. 424, 432. At the present term in *Nichols Lumber Co.* v. *Franson*, decided December 3, 1906, Mr. Justice White, speaking for the court, said:

> "We deem it the better practice in every case of direct review on a question of jurisdiction to make apparent on the record by a bill of exceptions, or other appropriate mode, the fact that the question of jurisdiction was raised and passed upon *and the elements upon which the decision of the question was based.*"

Does the record in the case at bar fulfill the requirements of these settled rules? Is it distinctly and unequivocally shown that the court below sends up for consideration any definite question of jurisdiction? Is

the precise question so clearly, fully and separately stated in the formal certificate (p. 394), or in the final decree (p.387), or in the order allowing the appeal (p. 392) that no further examination of the record is necessary to reveal it? Do the elements upon which the decision of the question of jurisdiction was based appear in any appropriate mode? Is the question intended to be certified one as to diversity of citizenship or as to amount in controversy or as to failure to comply with the ninety-fourth rule or as to alleged collusion?

The formal "certificate" (p. 394) states only that at the final hearing the appellant objected to the jurisdiction of the court as a court of the United States to hear and determine the cause, and asked the court to dismiss the cause for want of jurisdiction, that an appeal was prayed and granted solely upon the question of the jurisdiction of the court as a court of the United States, that certain designated testimony, comprising 230 printed pages, was the only evidence on the question of the jurisdiction of the court to hear and determine the cause, and that certain enumerated portions of the record 56 in number and comprising 397 printed pages, which the clerk is directed to certify and transmit to this court, contain all the records of the court that have any reference to the jurisdiction of the court in this cause. The record so certified is practically the entire record in a protracted litigation upon the merits of a bill for an injunction, showing the investigation and determination of numerous controverted questions of law and fact, many of which do not even

remotely touch any question of jurisdiction, federal or otherwise. Substantially all of the averments of the bill (record, p. 2) and the amended bill (p. 75) were put in issue by the answer to the original bill (p. 56) and the answer to the amended bill (p. 94). These averments were of jurisdictional facts relating to the jurisdiction of the court both as a federal court and as a court of equity, and also of facts relating to the merits of the complainant's claim, and the evidence (pp. 140 *et seq.*) was addressed to the proof of all these averments. No attempt has been made, except in the brief of counsel, to specify any particular portions of the evidence as relating to a supposed jurisdictional question. In all this voluminous record there is no plea to the jurisdiction or motion to dismiss for want of jurisdiction presenting to the court below any definite question of jurisdiction upon specific grounds. In this situation, is a formal certificate sufficient which states nothing more than that the entire record of an essentially non-federal litigation on the merits contains somewhere a question of federal jurisdiction by reason of an objection at the final hearing of which the form and contents is nowhere stated, that the appeal was taken solely upon this question of jurisdiction, and that such question only is sent up for decision?

Tested by the rules stated above, it is submitted that the certificate in the case at bar falls far short of the statutory requirement. A certificate which contains no statement of any specific or precise question of jurisdiction cannot be said to state a "definite" question of jurisdiction. It cannot be said that in such a certificate "the precise

question" is so "clearly, fully and separately stated" that "no further examination of the record would be necessary."

A simple perusal of the final decree (p. 387) also shows its insufficiency as an equivalent for the required certificate. It adjudges an ordinance of the city of Chicago to be void under the constitution and laws of Illinois, and restrains its enforcement by an injunction in favor of the complainant. It contains recitals of various findings and conclusions upon the merits of the bill, as well as of jurisdictional facts, some of which, *e. g.*, as to diverse citizenship and the amount in controversy and collusion, relate to the federal jurisdiction, whilst others, *e. g.*, as to compliance with the ninety-fourth equity rule and the inadequacy of the remedy at law, relate to equity jurisdiction.

The order allowing the appeal (p. 392) is equally insufficient. It states that, upon consideration of the petition for appeal and the assignment of errors, the appeal is allowed solely upon the question of the jurisdiction of the court as a federal court "to hear and determine this cause between the parties to the bill as presented therein."

It does not specify any *definite* question of jurisdiction or whether the question was as to diversity of citizenship or because the People's Company should be aligned on the same side as the complainant or because the amount in controversy was insufficient or because of collusion. The verified bill (p. 2, amended bill, p. 75) averred in proper form diversity of citizenship, sufficiency of matter in dispute, compliance with the ninety-fourth

equity rule, including the absence of collusion, invalidity of the ordinance under the constitution and laws of Illinois, the necessity for an injunction to avoid a multiplicity of suits, the absence of an adequate remedy at law, and the certainty of irreparable injury from an enforcement of the void ordinance. The answer put all these averments in issue (pp. 94, 98–102). By reference to the recitals of the final decree (p. 387), it will be seen that each and all of the averments of the bill were found to be true. If true, undoubtedly the court had jurisdiction as a federal court and also as a court of equity to grant the injunction.

The proper office of the assignments of error, twelve in number, is not to indicate what questions have been in issue in the court below but what questions are desired to be raised in the appellate court. Whether any question was duly put in issue is to be determined by the pleadings and the record and not by what the defeated party sees fit to assign as an error. In other words, an assignment of error does not show that the error suggested was based on a question duly "put in issue." Hence, in the case at bar, what question of jurisdiction as a federal court was in fact put in issue and intended to be certified to this court cannot be answered without searching the record. The bill and amended bill, which together constitute but one pleading (*French* v. *Hay*, 22 Wall. 238, 246) and comprise 55 printed pages (pp. 2–46, 75–86), must be examined to ascertain whether sufficient averments were made as to jurisdiction. Turning to the answer to the amended bill (p. 94), it appears that issues

were raised as to diverse citizenship, as to the amount in controversy by reason of complainant's interest in the company, as to compliance with the ninety-fourth equity rule, including the absence of collusion, and as to the inadequacy of the remedy at law, as well as to the facts constituting the grounds of relief.

In the absence of a certificate showing a "definite" question of federal jurisdiction, so "clearly, fully and separately stated" by the court below after its final decision "that no further examination of the record would be necessary," all of these questions are possible subjects of inquiry in order to determine what question was intended to be certified. A similar situation existed in *McHenry* v. *Alford*, 168 U. S. 651, 659, where the Circuit Court of Appeals certified the question whether the circuit court had jurisdiction, and Mr. Justice Peckham enumerated various possible questions relating to the jurisdiction of the court below, and said:

> "All these questions are possible subjects of inquiry in order to answer the general question submitted to us. We should not be asked to grope our way through the papers submitted and examine every objection that imagination could raise, with no hint as to what, if any, objection is really supposed to exist."

Of course, when the judgment itself refers to grounds of decision and shows the specific and definite elements upon which the decision of the question of jurisdiction was based, the court is able to determine with reasonable certainty what the court actually ruled. Thus, in *Re Lehigh Min. & Mfg. Co., Petitioner*, 156 U. S. 322, 327, the judgment "recited that, for reasons

in writing filed as part of the order, the court considered that it had no jurisdiction of the case, and therefore dismissed it for want of jurisdiction."

In *Interior Construction Co.* v. *Gibney*, 160 U. S. 217, 219, there was a plea to the jurisdiction upon specified grounds, and a dismissal based upon the plea, and the record showed that "the only matter tried and decided in the circuit court was a demurrer to the plea to the jurisdiction."

In *Huntington* v. *Laidley*, 176 U. S. 668, 676, Mr. Justice Gray said:

> "The final decree of the circuit court of the United States recited that, at the hearing upon the petition for a rule for an attachment for contempt, the court examined the bill and amended bills and answers thereto, and the undisputed records of the suit in the state court; and that from such examination it appeared to the satisfaction of the court that this suit did not really and substantially involve a dispute or controversy properly within its jurisdiction, because of the pendency of those suits in the state conrt, and for that reason the court was of opinion that it was required by section 5 of the act of March 3, 1875, c. 137, to dismiss the suit; and it was therefore, upon the court's own motion, adjudged and decreed that the suit be dismissed."

In *Excelsior W. P. Co.* v. *Pacific Bridge Co.*, 185 U. S. 282, 284, it appeared that "upon argument, which was upon the question of jurisdiction alone, the court held that the suit was not one arising under the patent laws but solely out of a contract; that the court had no jurisdiction, and a decree was entered to that effect."

In *Hennessy* v. *Richardson Drug Co.*, 189 U. S. 25, 33, the case had been dismissed, and

> "The decree stated among other things: 'And the court finds that neither the bill, nor the bill as amended, nor the evidence shows the citizenship of complainants, or any of them so as to confer jurisdiction upon this court.'"

In *Petri* v. *Creelman Lumber Co.*, 199 U. S. 487, 492, as Mr. Justice White observed,

> "The judgment of dismissal and the prior proceedings clearly exhibit the ground upon which the judgment was based, and plainly make apparent on the record the fact that the only matters tried and decided in the circuit court were demurrers to pleas to the jurisdiction."

It is true that under the act of February 25, 1889, c. 236, 25 Stat. 693, this court had jurisdiction of direct appeals from the circuit courts in cases "in which there shall have been a question involving the jurisdiction of the court," without a certificate of such question, and this court was under the necessity of ascertaining and deciding the question of jurisdiction upon the whole record. *Mississippi Mills* v. *Cohn*, 150 U. S. 202, 203. However, "the act of 1891 was framed in this regard in view of the former act" and to relieve this court of that necessity. *Maynard* v. *Hecht*, 151 U. S. 324, 326–328. "Indeed," as Mr. Justice Brown said in *Van Wagenen* v. *Sewall*, 160 U. S. 369, 373,

> "it appears to have been the very object of the fifth section of the act of 1891 to have the question of jurisdiction *plainly and distinctly certified* to us, or at least to have it appear so clearly in the decree of the court below, that no other question was involved,

that no further examination of the record would be necessary."

The petition for appeal in the case at bar (p. 389) contains no statement of any question but merely represents that the court erred in that it "assumed and asserted jurisdiction as a circuit court of the United States" without indicating or specifying where or how or why, except by reference to the assignment of errors filed with the petition, and prays for an appeal "solely on the question of jurisdiction" and that "said question of jurisdiction" be certified.

With respect to the assignment of errors, it may be repeated that the equivalent for the required certificate in an equity case can exist only in the explicit terms of the final decree or of the order allowing the appeal (*Huntington* v. *Laidley*, 176 U. S. 668, 676; *Courtney* v. *Pradt*, 196 U. S. 89, 91, and cases cited), and that, therefore, the assignments are not entitled to be considered as equivalent to the required certificate unless they are so incorporated in the order allowing the appeal by appropriate words of reference as to show that the court intended to certify the assignments as presenting the questions *put in issue* and decided. It is submitted that the mere recital in the order allowing the appeal that it is "upon a consideration of the assignment of errors" is not sufficient to show that the questions covered by the assignments were duly put in issue or to indicate to this court that the court below intended to certify each and every assignment of error. If any such omnibus certification is intended, the court below should say so in express terms.

The present order allowing the appeal contained no expression indicating the intention of the court to rule upon or certify all the *twelve* assignments of error (p. 390), and therefore the appellant's assignments cannot be considered as the equivalent of a certificate by the court below. In *Maynard* v. *Hecht*, 151 U. S. 324, 328, Mr. Chief Justice Fuller said :

> " It appears that the petition for writ of error was filed in this case July 6, 1891, together with a bond for the prosecution thereof, and an assignment of errors, and this petition and the assignment raised the question that the matter in dispute in the cause did not exceed, exclusive of interest and costs, the sum of two thousand dollars; but the trial judge made no endorsement thereon. The writ specifies no particular ground of error, and it is upon the writ that the allowance was entered November 16, 1891, the judge certifying that on that day it was presented to him 'for allowance and signature.' But in any view the absence of the formal certificate cannot be helped out by resort to these papers."

In *The Bayonne*, 159 U. S. 687, where the formal certificate was held unavailing because made too late, this court was asked to consider the petition for appeal as equivalent thereto. The order of the court below was " appeal allowed " endorsed on the petition, and it was held that the petition could not be treated as equivalent to the required certificate, although the prayer for appeal was " upon the ground that this court was without jurisdiction to make the said decree," because, as Mr. Chief Justice Fuller said (p. 693), " it specified no question of jurisdiction." This court was also asked to regard the assignment of errors as such equivalent, but Mr. Chief Justice Fuller said (p. 693):

> "We do not, however, regard the assignment of errors and the action of the court in directing it to be filed, as a compliance with the statutory provision and equivalent to the certificate required."

In *New York, &c., R. Co.* v. *Weisberg*, 191 U. S. 558, the record shows that the case was an action at law in a circuit court founded on diverse citizenship, that the defendant moved to dismiss the complaint on the ground that diverse citizenship was not shown to exist, that this motion was overruled and judgment was entered for the plaintiff, that there was no certificate of the jurisdictional question, and that the assignment of errors filed with the petition for a writ of error related only to such jurisdictional question. If ever an assignment of errors could of itself be taken as equivalent to the required certificate, that was such a case; but the decision of this court was :

> "Dismissed for the want of jurisdiction. *Maynard* v. *Hecht*, 151 U. S. 324; *The Bayonne*, 159 U. S. 687, 692; *Chappell* v. *United States*, 160 U. S. 499, 507."

The opinion of the court below in the case at bar, filed four days before the entry of the final decree, cannot be regarded as equivalent to the required certificate. The court did indeed discuss the question whether the suit was a collusive one to confer jurisdiction of a case of which the court would not otherwise have cognizance, and gave reasons based on the testimony for the conclusion that the suit was not collusive. The same situation existed in the case of *Merritt* v. *Bowdoin College*, 167 U. S. 745. There the appeal was limited to the single question of jurisdiction, and a formal certificate was

made of the question whether the case was a collusive one to confer jurisdiction of a case of which the court would not otherwise have cognizance. The certificate was held insufficient because it was not made during the term at which the final decree was entered. The record of that case shows that the court below rendered an elaborate opinion upon the question of collusion before the final decree, and the briefs of counsel show that it was strenuously urged in this court that such opinion was equivalent to the required certificate, but without avail. The appeal was dismissed for the want of jurisdiction on the authority of prior cases.

In view of the numerous decisions of this court pointing out the practice and the necessity for clearly specifying the definite question of jurisdiction as a court of the United States, which the court below intends to certify to this court, there is no reason why any exception should be made in the present case. It was perfectly easy to have certified the question of collusion or alignment or citizenship. The want of definiteness in the situation before the court cannot be better evidenced than by the attempt on the part of appellant in the brief now filed to discuss, under the existing certificate, not only the question of collusion but questions of general equity jurisdiction applicable to all courts of equity.

III.

As to the necessity for a new suit on the ground that the pending suit, in which the bill had been dismissed for want of jurisdiction, did not adequately protect the interests of the company and its stockholders.

It was one of the principal contentions on the part of the city of Chicago in the court below and is repeated

in this court (*vide* appellant's brief, pp. 60 *et seq.*) that the refusal to sue by the board of directors and stockholders of the People's Company was proper, and that "the undisputed evidence in this record shows that the corporate rights were being adequately protected by the officers of the People's Company at the time the bill of complaint was filed, and therefore a stockholder had no standing in the federal court" (p. 60). Indeed, the city contended in one breath that the action of the board of directors in refusing to sue was proper, and yet in the next breath that the refusal to sue was so improper as to constitute evidence of collusion on the part of the company and the complainant. If the refusal to sue was proper, obviously no occasion or motive would have existed for collusion. It is, of course, only a sham or unreasonable refusal in a case where the company itself ought to sue that can have any legitimate tendency to prove collusion or any motive for it. Although the question as to whether or not the board of directors and stockholders should have directed a new suit to be brought is not one of jurisdiction of the circuit court as a federal court, but one of general equity jurisprudence, the question will nevertheless be considered as showing good faith and the absence of any collusion.

The court below in its opinion overruling the demurrer to the original bill fully discussed the contention urged on the part of the city that there was no necessity or excuse for any new suit on behalf of the company and that consequently the refusal of the board and stockholders was right, and in so doing used the following language (record, p. 52):

"The fourth point against jurisdiction is the one on which greatest stress is laid. In the suit previously heard here, pending now on appeal by the Gas Company in the Supreme Court, the Gas Company challenged the validity of the ordinance, both because it was said to impair the company's contract right under its charter, and because the City Council was without power delegated to it by the State to regulate the prices of gas. The court held in that case, that no charter contract as claimed existed, and so holding declined to hear or pass upon the question of delegated authority, for the reason that the cause came into the federal court solely as one arising under the Constitution and laws of the United States, wherefore the ground of federal jurisdiction failing, the other question involved—solely one of state law—must go out of court also, though without prejudice to a new suit in the proper forum.

I think, under such circumstances, it to be unquestioned, that had there been no appeal, and had the company refused to bring a new suit in the appropriate tribunal, a suit, such as this, would lie at the instance of a stockholder. But the insistence of counsel is, that the appeal, by the Gas Company to the Supreme Court, on both grounds, shows that the company is still seeking, in the Supreme Court of the United States, to invalidate the ordinance as one not delegated under the laws of Illinois to the city council, and in so doing meets fully its duty in the premises to its stockholders. The trouble is that such appeal does not fully meet the measure of the company's duty. The suit pending on appeal will not bring a judgment touching the power of the city council, if the impairment of contract question be determined against the company. This court has so held, and there is no reason to believe that the Supreme Court will hold otherwise. At any rate,

until it is held otherwise, the former holding remains the law of the case.

But if the company has taken no measure conformable to law to prevent the wrong threatened, the right of the stockholder to take such measures cannot be disputed, and a measure conformable to law is to be tested, not by the company's opinion of the law, but by the law itself. The stockholder is entitled to the law, not to a mistaken view of the law; to an action that will lie, not to an action that must be dismissed for want of jurisdiction in the court resorted to."

The exact situation as it existed in January, 1903, before the amendment of the decree by consent should be appreciated as well as the vital importance to the company and its stockholders of having the ordinance of October 15, 1900, declared invalid. It will then be manifest that it was the duty of the officers and directors of the People's Company to have instituted a new suit in a proper court in January, 1903, in order to protect the interests of the company and its stockholders in accordance with Mr. Mills' request. The effect of the reduction of the revenue of the company if the ordinance were valid and enforced was enormous. A reduction of twenty-five cents per thousand cubic feet was shown to equal $2,750,000 per annum (p. 200), being the equivalent of over eight per cent. upon the capital stock of the People's Company (p. 198). The number of the company's customers was shown to be upwards of three hundred and fifty thousand (350,000), whose average consumption was only $2.50 per month, or between $26 and $28 per annum (p. 200). It was also shown that most of these custom-

ers were of small means (pp. 201, 224), and practical experience had demonstrated the difficulty, if not the impracticability, of collecting arrearages (pp. 201, 224). If the company were compelled to comply with the ordinance pending litigation, a few months' delay would have involved a loss of millions of dollars and probably bankruptcy, for the sums accruing for the most part could never be collected (pp. 201–202, 224). Hence, the very strongest possible reasons existed for the interposition of a court of equity in order to prevent irreparable loss and damage and a multiplicity of suits. In addition, the ordinance was designedly framed so as to be most oppressive. It imposed "a penalty of not less than twenty-five dollars ($25), nor more than two hundred dollars ($200) for each and every offence" (p. 79). In other words, the penalties which the representatives of the city were threatening to endeavor to collect, if an injunction were not issued, would amount to $8,750,000 per day at the rate of a $25 penalty "for each and every offence," and to $70,000,000 per day at the rate of a $200 penalty "for each and every offence," for the company has 350,000 customers. Thus, by one day's violation of this ordinance the company might incur the practical forfeiture and confiscation of all its property. *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79, 100. Under such circumstances, it was surely natural that the stockholders should be most anxious to protect their interests and to run no unnecessary risk.

The bill in the prior suit had been dismissed for want of jurisdiction, and it was practically certain that this court on the then pending appeal of the People's Com-

pany would, as the decree then stood, limit the point which it would consider "to the naked question of jurisdiction" (p. 46), and reverse with instructions to the lower court to decide upon the merits. *Huntington* v. *Laidley*, 176 U. S. 668, 680; *Illinois Central Railroad Co.* v. *Adams*, 180 U. S. 28, 41; *Excelsior W. P. Co.* v. *Pacific Bridge Co.*, 185 U. S. 282, 295; *Doctor* v. *Harrington*, 196 U. S. 579, 589.

The decree in the prior suit, moreover, had definitely settled nothing upon the merits even as to the alleged contract right, for a decree dismissing a bill for want of jurisdiction does not constitute *res adjudicata* and in no way concludes the right of action. *Smith* v. *McNeal*, 109 U. S. 426, 429; *Illinois Central Railroad Co.* v. *Adams*, 180 U. S. 28, 35. The circuit court had ruled in its opinion filed January 15, 1902, that the question of power of the city council could not be considered in the pending suit (p. 301) and that relief to the company must be found in a new suit in the state courts (p. 302), and, apparently acquiescing in this ruling, the People's Company had on June 5, 1902, amended its bill and omitted all allegations as to the want of power and prayed for relief only under its alleged contract right (pp. 303, 360). Yet, the company had failed to begin any such suit, and was staking the interests, if not the solvency, of the company on an appeal which was unlikely to result in any definite decision on the merits.

As it ultimately turned out, the wisdom of the advice given to Mr. Mills and submitted to the company was demonstrated. This court affirmed the decree in the suit of the People's Company and declined to pass

upon the question of power (194 U. S. 1), and if it had not been for the pendency of the suit now at bar, the ordinance of October 15, 1900, would have at once gone into effect and irreparable damage would have resulted therefrom. There can be no doubt that the duty of the company to sue would have been obvious and indisputable if the directors could have foreseen the affirmance by this court.

It is true that a stay had been granted on the pending appeal (p. 257), but that stay would necessarily have been vacated as soon as this court affirmed the lower court and likewise if this court reversed merely on the question of jurisdiction. Indeed, the very fact that there was a stay in the pending suit rendered it all the more the duty of the managers of the company to avail of that period of protection to seek and obtain an adjudication upon the fundamental question of power. If the company had waited two years without doing anything, without instituting a new suit involving the question of power notwithstanding the clear intimation of Circuit Judge Grosscup that a new suit involving that question should be brought in a state court, would any court of equity have issued a preliminary injunction? Would it not have been urged most forcibly by the city and would it not in all probability have been held by the court that the company had delayed too long and that as it had been held that the question of power was not involved in the prior suit, it ought promptly to have instituted a new suit in a state court and not have wasted years in fruitless litigation? What possible advantage could the company reap by delay in instituting a new

suit on the question of power commensurate with the risk involved in delay? Was not Mr. Mills' counsel, therefore, right in his judgment that the interests of the company and its stockholders would not be served by delay, but might be greatly prejudiced thereby (pp. 225-256)? Can any one imagine a more perilous situation for such a company than that which would have existed if the present suit had not been pending when this court affirmed the decree in the prior suit? What answer would directors then have been able to make to the suggestion that in common prudence they ought in the meantime to have anticipated the result and instituted a new suit to protect the company and secured an adjudication on the question of power? The only thing that saved the company from irreparable loss after the affirmance by this court of the decree in the prior suit was the fact that in the meantime Mr. Mills had secured an adjudication that the city council had no power to pass the ordinance (p. 55) and secured an injunction in his suit. That adjudication, and that alone, saved the company from ruin.

It is earnestly submitted that under the circumstances disclosed in the case at bar, it was clearly the duty of the managers of the People's Company to have brought a new suit in order to test the question of the power of the city council, as requested by Mr. Mills, and that upon their failure to do so, he, vitally interested as the largest stockholder of the company, was fully justified in filing his bill to protect his own interests and those of other stockholders.

The situation facing Mr. Mills was most serious. He

had a fortune of over $2,200,000 invested in the stock of the People's Company. He was the largest individual stockholder and naturally anxious and concerned about its interests. As he pointed out in his letter, the ordinance would reduce the gross income of the company one-quarter and the net income much more (pp. 161, 200). The loss involved by delay in collecting bills during the pendency of litigation if the company meanwhile were compelled to abide by the ordinance would have been tremendous (p. 202), amounting to several million dollars (p. 224), and a refusal or failure to comply with the ordinance, if only for the purpose of having the question tested in good faith in a court of law, might have involved the ruin of the People's Company by reason of the penalties incurred. The business of the company is approximately 11,000,000,000 cubic feet per year (p. 200), and the amount involved represented a reduction of revenue of $2,750,000 per annum, or eight per cent. upon its capital stock. There can be no reasonable doubt, therefore, that from the standpoint of Mr. Mills, the questions involved were of vital and enormous importance, and that he was justified in the anxiety which prompted him to consult counsel and to institute the present suit upon the refusal of the directors and stockholders to do so.

IV.

As to the contention that the refusal of the board and stockholders to sue was in pursuance of a collusive agreement.

The bill in this suit as originally filed contained two separate and distinct grounds of jurisdiction, the one

impairment of the contract right, and the other diversity of citizenship (*supra*, p. 2).

The decree in the prior suit dismissing the bill "for want of jurisdiction" was not a bar to a new suit in a court of the United States by the company itself, nor in any event for divisional relief under the contract, if the company elected to demand it. The company, itself, therefore, could have filed in a court of the United States substantially the same bill of complaint that Mr. Mills originally filed, praying divisional relief under its alleged contract right. It necessarily follows that diversity of citizenship was not essential or controlling as the basis of the jurisdiction of the circuit court to hear and determine the controversy, and that, so far as jurisdiction as a federal court was concerned, there was really no occasion or motive for collusion. It will, therefore, be readily understood why the difference between the state and federal courts was never even discussed or considered (p. 197) except that Mr. Mills was advised that if he sued, he could resort to a federal court.

In *Simpson* v. *Union Stock Yards Co.*, 110 Fed. Rep. 799, 801, the court said:

> "Aside from these facts, there could have been no collusion, because there can be no collusion without reason or motive, or to subserve some purpose. The company, although a corporation and citizen of Nebraska, could have brought this action in this court, as complainant, against the Nebraska citizens and officials. The right of the state to pass the act in question is a federal question, concerning which this court would take jurisdiction regardless of citizenship; and, taking jurisdiction by reason of the federal question, this court would also take jurisdic-

> tion of the question of whether the act was legally passed; and it would retain jurisdiction, and adjudicate that question, even though the federal question was held to be wholly without merit. All recognize the correctness of this. Therefore it is wholly immaterial whether Mr. Simpson brought the action in this court, or whether the company brought it."

See also *Illinois Central Railroad* v. *Adams*, 180 U. S. 28, 33-37; *Ball* v. *Rutland R. Co.*, 93 Fed. Rep. 513, 515; *Kimball* v. *City of Cedar Rapids*, 99 Fed. Rep. 130, 131-132.

The question of collusion is, of course, to be determined by the conditions existing when Mr. Mills requested the board of directors and the stockholders of the People's Company to institute a new suit, and when he filed his bill, June 8, 1903, and not by subsequent developments. As Chief Justice Marshall said in *Mollan* v. *Torrance*, 9 Wheat. 537, 539:

> "It is quite clear, that the jurisdiction of the court depends upon the state of things at the time of the action brought, and that after vesting, it cannot be ousted by subsequent events."

See also, *Kirby* v. *American Soda Fountain Co.*, 194 U. S. 141, 145; *Hardenbergh* v. *Ray*, 151 U. S. 112, 118; *Colorado Central Mining Co.* v. *Turck*, 150 U. S. 138, 144; *Mexican Central Ry.* v. *Pinkney*, 149 U. S. 194, 200.

The determination of this question of collusion does not depend upon whether the actual interests of the People's Company and the complainant were in fact identical at the time the bill was filed, or have become so, but solely upon the question whether demand on the company to institute a new suit was made in good

faith and was refused by the corporation without collusion with the complainant. It is submitted that if, as we have seen, Mr. Mills was reasonably warranted in assuming on the advice of his counsel that this court on the pending appeal might "limit the point which it will consider . . . to the naked question of jurisdiction," that the pending suit did "not involve any question as to the power of the common council of the city of Chicago to reduce the charges of our company" (Mr. Mills' letter of December 16, 1902, pp. 46, 160), and that delay until the pending appeal could be heard by this court was dangerous and not for the best interests of the People's Company (pp. 255–256), then there could be no question as to his right to sue unless he was acting in collusion with the company.

The event proved that the view of Mr. Mills' counsel was correct, that the directors ought to have sued, that the present suit was absolutely necessary, and that if it had not been brought, the ordinance would have been enforced to the irreparable damage of the company immediately upon the affirmance of the decree in the prior suit. The stay granted in the prior suit fell with the decree of affirmance.

As we have seen, the decree in the prior suit had dismissed the bill for want of jurisdiction and all parties then believed that such was the intention of the learned circuit judge who decided the case (pp. 147, 151, 221, 225, 228, 255-257, 261). Such belief was based upon the opinion filed July 30, 1902, sustaining the demurrer to the amended bill in that suit, the concluding sentence of which reads as follows (p. 364):

> "The demurrer to the amended bill will be sustained, and the bill dismissed for want of jurisdiction in this court over the cause of action set forth."

The proofs also show that only on the argument of the demurrer in the present suit, on December 5, 1903, was it ascertained for the first time that the decree as entered did not correctly recite the intention of the court (p. 261). The decree was then amended *nunc pro tunc* by the consent of the city, and the record before this court accordingly corrected. This was a distinct advantage to the city, for a decree dismissing a bill for want of jurisdiction did not constitute *res adjudicata* on the merits either in a state or federal court. That this had an important, if not controlling, effect in this court cannot be doubted, and the city should hardly be allowed now to urge that this amendment made no change in the existing situation.

In considering the bearing and effect of this vital feature as to the form of the decree in the prior suit, most prominent at the time and relied on by all the parties, the fact should not be overlooked that the city itself was responsible for the condition of the decree. It is elementary in equity practice that the prevailing party is bound to see to it that a proper decree is entered, and particularly so when large public interests are involved. The duty of framing a decree duly reciting the actual finding and decision of the court and constituting *res adjudicata* is not cast upon the defeated party any more than it is imposed upon the court. Had the city called the court's attention to the error at the time the decree was entered or

at any time afterwards, the advice given to the directors and stockholders of the People's Company by their counsel might have been different and the request for a new suit might then have been complied with. At any rate, an entirely different situation would have existed.

There can be no doubt from the evidence that Mr. Mills consulted counsel of his own motion and for his own account, that he "had nothing to do with the company," that the suit was not brought at its request, that he had no agreement with it directly or indirectly to reimburse him the expenses of the suit (pp. 164, 174, 180, 181, 222), and that the company has never directly or indirectly contributed to the expenses of the suit (pp. 180–181, 222).

The city contends that the refusal of the directors of the People's Company to begin a new suit was not *bona fide*, but the complainant is not called upon to justify or uphold the attitude of the People's Company in 1903. It is enough for him to show that he did not enter into any collusive agreement with it, for if he acted honestly and without collusion, the motives or mental operations of the directors of the People's Company or their erroneous views of the law are of no weight whatever. As appears from uncontradicted evidence, Mr. Mills' counsel then differed with the counsel of the company (pp. 255-257, 263). Subsequent developments showed the view of Mr. Mills' counsel to have been correct, but no one could assume to prophesy, and neither counsel could be criticized for not anticipating that the amendment of the decree in the prior suit, December 5, 1903, on the eve of the argument in Washington, would (as it undoubtedly did)

deprive the appeal of the reasonable certainty of success, but even the contemplated success would have been barren if the court had reversed solely on the question of jurisdiction. If counsel for the company ought to have anticipated the affirmance of the decree, then indisputably the company should have complied with Mr. Mills' request, and appellant's brief virtually so concedes (at bottom of p. 65).

The reasons why the company refused to sue were testified to at length and were summarized in Mr. Meagher's testimony quoted above at pp. 10–13.

The company at that time not only had pending its appeal from the adverse decree in the prior suit involving the validity of this ordinance, with a stay pending appeal under a bond for $600,000, but also litigation with the state in *quo warranto* proceedings which vitally affected its organization and its right to exist (pp. 253, 257; 205 Illinois, 482). The political condition of affairs in Chicago was supposed to be delicate and public opinion was assumed to be more or less prejudiced against the People's Company (pp. 152, 228). Further litigation by the company itself appeared imprudent and injudicious, first, because it might tend to inflame an already hostile public opinion, and, secondly, because it might prejudice the pending appeals and the pending stay (pp. 161, 204, 228, 256, 279). The representatives of the company undoubtedly assumed that, if it brought a new suit, the fact would be urged upon this court on behalf of the city as contradicting the plea that the court should in justice consider the whole case and adjudge the merits of the con-

troversy, and the company also undoubtedly apprehended that if it sued an application might then at once be made to vacate the pending stay if an injunction were refused on the merits in the state court (p. 257). A perusal of Mr. Meagher's testimony cannot fail to convince the court that he and his associates, Judge Sears and the late Judge Moran, were acting in entire good faith and sincerity, and that they advised what they believed to be for the best interests of their client, the company (pp. 255 *et seq.*, 263). That the directors acted on the advice of counsel of repute is not challenged (pp. 204, 256-257, 278-279). The company's representatives assumed that the decree as entered correctly recited the intention of the court (pp. 147, 151, 221, 225, 228, 255-257, 261), they were apparently confident that the decree must be reversed (pp. 228, 255-257, 260, 261), they thought that the mere fact of reversal would help the company in public opinion (pp. 255-257), and we now find the city contending that the action of the board was proper (see appellant's brief, p. 60).

On the other hand, Mr. Mills' counsel looked at the situation solely from the legal standpoint, and believed that delay would be prejudicial to the interests of the company and its stockholders (pp. 255–256); and he, therefore, insisted, on behalf of his client, in a matter jeopardizing over $2,200,000 of property value, that a new suit should be promptly brought and no further risk run. The result, as we have seen, showed the correctness of this view, and that the company ought to have complied with Mr. Mills' request.

The city nevertheless contends that, although the

refusal to sue was proper, nevertheless certain facts disclosed in the evidence tend to establish collusion between the complainant and the People's Company, and the principal facts relied on in support of this contention are as follows: (1) that complainant's counsel argued in this court the appeal of the People's Company, (2) that the officers of the company in January, 1906, expressed a desire that the complainant should prevail in this suit, (3) that the vice-president of the company contributed to the expense of this suit, and (4) that Mr. Mills testified that the suit was brought to confer jurisdiction on a court of the United States of a case not otherwise cognizable by it.

1.

As to the employment of complainant's counsel to argue in this court the appeal of the People's Company.

After the present suit had been brought on behalf of Mr. Mills and all other stockholders, June 8, 1903, the People's Company retained the complainant's counsel, Mr. Guthrie, to argue its appeal in the prior suit, and in January, 1904, Mr. Guthrie did argue that case before this court. It appeared that Mr. Guthrie had not been employed or consulted or conferred with by the People's Company in relation to the prior litigation in any way or manner until after the commencement of the present suit (pp. 204, 205, 206, 221, 225, 226, 252, 258), and then only because Mr. Meagher, the counsel of the People's Company, whose appearance had been entered in this court in September, 1902 (p. 262), was ill and about to go to Europe for his health and felt that he required the assistance of counsel in this court where the appeal was

shortly coming on to be heard (pp. 257–258). Upon the point that Mr. Guthrie had not been acting as counsel for the company, Mr. Meagher testified as follows (p. 252):

> "Q. Did Mr. William D. Guthrie of the city of New York have anything to do with that litigation then pending? A. Absolutely nothing.
>
> Q. Was he ever consulted, conferred with or even spoken to upon the subject, so far as you know? A. Not to my knowledge."

And in this testimony Mr. Meagher is fully corroborated by Mr. Knapp, president of the company (pp. 204–205), and by Mr. Billings, chairman of the board of directors (p. 226). It is, however, contended on behalf of the city of Chicago that because Mr. Guthrie, who was familiar with such questions and represented the largest stockholder of the company in a suit then pending in regard to the same matter, saw fit to argue the appeal of the company in this court, this fact tended to show collusion between Mr. Mills and the company in the bringing of this suit. Of course, if there had been any such collusion, Mr. Guthrie would never have been selected and put forward openly to argue on behalf of the company in this court.

In overruling this contention, the court below in its opinion well said (p. 386):

> "The fact that the same counsel was employed by the company in its suit, and by Mills in his, is not alone sufficient to show collusion. Mr. Guthrie was not of counsel for the company when the Mills suit was brought, and it may very well have transpired that the desire of the company to employ him in the argument before the Supreme Court arose after the

> Mills suit had been brought. Nor is it to be held that because two clients employ the same counsel respecting the same general end, they are in agreement or collusion as to the means of bringing about the end."

It is submitted that it was perfectly proper for Mr. Meagher as counsel for the People's Company to retain the counsel of the largest stockholder of the company to argue the appeal and perfectly proper for Mr. Guthrie to accept the retainer and endeavor to secure a favorable decision from this court in the interest of the company and all its stockholders.

When Mr. Guthrie accepted this retainer and entered his appearance in this court, the decree in the prior suit had not yet been amended *by consent between the People's Company and the city of Chicago.* It is true that Mr. Guthrie had expressed the opinion that this court might not on that appeal consider the merits but only the question of jurisdiction and that the question of power was not involved on the appeal (p. 255); but this expression of opinion, which subsequently turned out to have been well founded, differed from that of the company's counsel and in any event did not preclude Mr. Guthrie from arguing in this court in favor of a reversal or upon any other question involved, whether by asking leave to file a brief on behalf of his client Mr. Mills or by arguing directly on behalf of the company itself. If Mr. Guthrie had not been retained by the company, he would undoubtedly have asked leave to file a brief on behalf of Mr. Mills on the ground of the latter's large pecuniary interest in the result. Surely, the mere fact that Mr. Guthrie was of opin-

ion that the prior suit was insufficient—which view turned out to be correct—did not prevent him from striving to protect his client's large interests in the questions before this court. Indeed, had Mr. Guthrie declined to argue the case on behalf of the company when his client's large property interests demanded every effort on his part, he would have invited criticism. And yet because Mr. Guthrie did what any counsel under such circumstances ought to have done in the performance of his duty to protect his client and agreed to argue a case in which his client was vitally interested, it is now urged that his conduct was improper and establishes fraud and collusion in the writing of the letter of December 16, 1902, and in the institution of the present suit in June, 1903.

Upon this branch of the case, as upon others, the testimony is most unfairly distorted and misstated in appellant's brief. One example may suffice. The following is a sample of the method of argument and criticism in which counsel of the city of Chicago have indulged in the brief filed in this court (at p. 37):

> "Mr. Guthrie had already informed Mr. Meagher and his own client, Mr. Mills, according to the evidence of Mr. Meagher, that the People's Company could not possibly win the appeal of the company's case in this court. . . . Mr. Guthrie, with his high sense of professional honor, does not see any impropriety in accepting a retainer for the purpose of arguing a case that he thinks is unfounded."

As matter of fact, Mr. Guthrie's position was that this court might only consider the naked question of jurisdiction as the final decree stood before the amendment made on December 5, 1903, and that the question

of power was not involved (pp. 46, 255), and he never advised Mr. Mills or Mr. Meagher that the People's Company could not possibly win the appeal in this court, and there is no evidence in this case to warrant or excuse any such statement.

As the decree stood dismissing the bill for want of jurisdiction, Mr. Guthrie's opinion was correct as to the probability that this court would not consider the merits but would *reverse* on the question of jurisdiction (authorities cited *supra*, p. 49). There was no reason why he should not even then have urged the court to consider the merits. And after the decree was amended by consent on December 5, 1903, there was clearly no reason why Mr. Guthrie should not have argued in this court on behalf either of the company or of its stockholders, whose interests were the same, the question of contract right or the question of power of the city council. His so doing could not possibly tend to establish that the suit he was conducting for his client, Mr. Mills, involving the same questions, was collusive or unnecessarily instituted.

2.

As to the desire of the officers of the company in January, 1906, that complainant should succeed in this suit and thereby establish the invalidity of the ordinance of 1900.

Upon this point, the court below in its opinion used the following language (p. 386) :

> "The evidence that the company, its officers and stockholders now openly wish Mills to succeed is not alone sufficient. Since the Mills suit was brought, the company's suit had been heard and affirmed by

the Supreme Court of the United States. The company is without hope now of any relief through that suit. But that does not prove that at the time the Mills suit was brought, the company did not reasonably believe that the decree of the circuit court of the United States dismissing the bill would be reversed; and that the supplemental litigation demanded by Mills was unwise. The situation is changed; and with change of situation there naturally comes a change of views—a change that in no respect alters the fact of what the views were before the situation changed."

The testimony is as follows: Two of the directors of the defendant company, Mr. Billings and Mr. Brady, and its counsel, Mr. Meagher, frankly and candidly admitted that they then (*i. e.*, January, 1906) desired to see the complainant succeed in this suit (pp. 235, 248, 249, 264). Of course, if they had simulated the contrary, if they had pretended that they wanted the suit dismissed and the injunction vacated to the great injury of their company, the fact would have been urged as wholly discrediting their sincerity. After the situation had changed and this court had affirmed the adverse decree in the prior suit (194 U. S. 1) and the Supreme Court of Illinois had affirmed the decision in the *quo warranto* proceedings (*The People ex rel. Deneen* v. *The People's Gas Light & Coke Co.*, 205 Ill. 482, 492), every director and every officer of the company would naturally desire to see the complainant succeed in order that the ordinance, which had already been adjudged void in the pending suit (p. 49) and which threatened the destruction of the company's property (p. 224), might be again and finally determined

to have been passed without any legal authority whatever and to be an unauthorized exercise of power. There was no inconsistency in the fact that the directors refused to sue in January, 1903, and that, after the situation had wholly changed, they then desired to see the complainant prevail in January, 1906. Surely, it became then their duty either to institute a new suit or to help maintain the pending case which was of vital interest to the company and all its stockholders. Indeed, the city seems to contend that if the corporation had brought a new suit after the affirmance by this court "no one could argue that the corporation had been derelict in any of the duties that it owed to its stockholders" (p. 65). The fact is that the company never brought any such suit, but its failure to do so cannot operate to impute fraud or collusion to Mr. Mills.

In *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S. 79, 113, where a stockholder filed a bill similar to the bill in the case at bar, it was contended in this court that the fact that the directors obviously desired the complainant to succeed and thus defeat the void statute was *evidence* of collusion, and emphasis was also laid upon the absence of any pleading on behalf of the company. The counsel who argued that case on behalf of the stockholder Cotting conceded in this court that the directors, of course, concurred with the complainant as to the unconstitutionality of the statute then in question, and desired his success and said that any pretense to the contrary would be transparently untrue. Speaking to this point, Mr. Justice Brewer said:

"There is no force in the suggestion that the offi-

> cers of the corporation agreed with the stockholders as to the unconstitutionality of the statute, and that therefore the suit is a collusive one. That was the condition in *Dodge* v. *Woolsey*, *supra*, and it only emphasizes the fact that the officers were refusing to protect the interests of the stockholders, not wantonly, it is true, but from prudential reasons."

It was likewise the condition in *The Delaware Railroad Tax Case*, 18 Wall. 206, 210.

So, also, in *Simpson* v. *Union Stock Yards Co.*, *supra* (110 Fed. Rep. 799, 801), the court said :

> " It was to the interest of the company to have the statute held invalid by the courts. No doubt every stockholder desired that result. No doubt that every stockholder hoped that able counsel would be employed to defeat the statute. But the board of directors could thus desire, and still refuse to incur the penalties."

See on the same question *Bowdoin College* v. *Merritt*, 63 Fed. Rep. 213, 215.

The mere fact that the People's Company in its answer prayed that the complainant's bill be dismissed is, of course, immaterial. As the testimony of Mr. Meagher shows, he evidently thought that the company's pleading should contain such a prayer, and followed the established form for the conclusion of answers in equity (p. 265). The amended answer, filed after the whole situation had changed, prayed that the complainant might be granted the relief prayed for (p. 384).

The fact that the counsel of the People's Company saw fit to delay filing any pleading, or subsequently filed an answer praying for a dismissal, which was by consent amended so as to pray that the complainant

be granted the relief prayed for, cannot prove collusion *at the time the suit was originally brought.* There was every sanction for the practice followed by counsel for the defendant company. In *Dodge* v. *Woolsey*, 18 How. 331, the company omitted to file any pleading, as also did the company in the *Cotting* case, 183 U. S. 79, and in the case of *Smyth* v. *Ames*, 169 U. S. 466. It is enough in all these cases that there is someone before the court, as here the defendant city, adequately litigating and contesting the complainant's right to relief. The attitude or procedure of the company after the suit had been instituted cannot affect the right of the complainant to maintain it or affect his good faith. The company having wrongfully refused to sue, and jurisdiction having attached on that basis, nothing that it might thereafter do or omit to do and no change of mind on its part could affect the progress of the suit, if otherwise the complainant were entitled to equitable relief on the merits at the time the bill was filed.

The authority relied on by the city in this phase, namely, *Corbus* v. *Gold Mining Co.*, 187 U. S. 455, is not at all in point, as will be seen by the following extract from the opinion of Mr. Justice Brewer, speaking for the court (p. 465) :

> "The rule requires that the plaintiff must set forth with particularity the efforts made by him to secure action by the directors. It does not appear that he made any effort to secure such action, but he relies simply on the distance of the directors from the place where he resides and in which the court is held as an excuse for not applying to them. We are of opinion that the excuse is not sufficient. He should at least

have shown some effort. If he had made an effort and obtained no satisfactory result either by reason of the distance of the directors or by their dilatoriness or unwillingness to act, a different case would have been presented, but to do nothing is not sufficient."

And no one appeared on behalf of the only defendant before the court, the United States intervening on its own account. In the case at bar, every effort was made to secure action both by the directors and by the stockholders and throughout the litigation the merits have been fiercely litigated on the part of the city defendant.

3.

As to Mr. Brady's contribution to the expenses of this suit.

The evidence showed that on May 14th, 1903, Anthony N. Brady, a large stockholder as well as a director and vice-president of the People's Company, sent the complainant Mills a check for $5,000 as a contribution towards the expenses of the litigation, and it is contended on the part of the city of Chicago that this payment tends to prove the existence of collusion between Mr. Mills and the People's Company.

Mr. Brady had been a holder of securities of the People's Company for at least fifteen years (p. 238), and at the time of the payment to Mr. Mills he owned more than 16,000 shares of its stock representing a par value of over $1,600,000 (p. 239). He was in fact the second largest stockholder (p. 240), Mr. Mills, with $2,205,500 par value, being the largest stockholder (p. 158). The uncontradicted evidence showed that on May 13th or 14th, 1903, *four months after the company had declined to sue,*

Mr. Mills met Mr. Brady and suggested to Mr. Brady that as he, Mr. Mills, was "bringing the suit at his own expense," Mr. Brady, as a large stockholder in the company, ought either to "contribute or get a contribution to help pay the expenses of the suit . . . from other large stockholders of record" (pp. 239, 242), and that Mr. Brady thereupon agreed that Mr. Mills ought not to be expected to pay the whole amount, and that he would send a contribution. Mr. Brady testified that he understood from Mr. Mills that $5,000 would be satisfactory (p. 240), that he appreciated that if Mr. Mills was successful in his suit it would be to the benefit of the stockholders of the company (p. 249), and that he sent Mr. Mills a check for $5,000 entirely as a personal contribution (p. 240). It was also shown by uncontradicted testimony that the company had had nothing to do directly or indirectly with this contribution, that it was not consulted about it, that the check was drawn on Mr. Brady's personal individual account, that the company had never reimbursed him, that the company had not contributed to the expenses of the suit, and that the fact of the payment was not known to the other officers of the company or to its counsel or indeed to Mr. Mills' own counsel (pp. 188, 210, 222, 240, 249, 261, 268).

The suit was on behalf and for the benefit of all the stockholders of the company (p. 2) to protect their interests as such. There was every reason why other stockholders ought to have shared in the expenses of the litigation and not have left the burden and liability to be borne wholly by Mr. Mills. It was, therefore, natural and proper for Mr. Mills to apply to Mr. Brady as the

second largest stockholder for a contribution, and likewise quite natural and proper for Mr. Brady, who was individually interested to the enormous amount of $1,600,000, to be willing to contribute. As Mr. Mills testified (p. 182):

> "I naturally would talk with him, because he was a stockholder almost equal to my own interest, and I considered that his interest—individual interest, was perhaps equal to mine. He was perfectly entitled to contribute—I would consider that he was perfectly entitled to contribute to the expenses of the case."

It is, however, urged as extremely suspicious that Mr. Brady's contribution was the exact amount, namely, $5,000, which Mr. Mills had already paid his counsel (p. 180), but this coincidence was explained by Mr. Brady who testified that he got the impression from Mr. Mills that $5,000 would be satisfactory (pp. 242–243). As the proposed suit was to be conducted at Mr. Mills' expense and would undoubtedly involve much expense in addition to the retainer already paid to Mr. Guthrie, there would have been nothing improper in Mr. Mills stating to Mr. Brady what he had already paid to his counsel, and suggesting that the other stockholders ought to reimburse him at least that amount. Mr. Mills testified on this point (pp. 163–164):

> "Q. Mr. Mills, at whose expense is this suit being conducted? A. At mine.
>
> Q. Have you any agreement—have you ever had any agreement with the company in regard to the institution of this suit, or in regard to the expense that you may incur in prosecuting this suit? A. No, sir.
>
> Q. Was this suit brought at the request of the

People's Gas Light and Coke Company? A. No, sir.

Q. Have you any agreement of any kind directly or indirectly with the People's Gas Light and Coke Company, or anyone, to indemnify you personally against the expenses and costs of this suit? A. No, sir."

The fullest opportunity was open to the defendant city of Chicago to have shown, if such had been the fact, that Mr. Brady's payment of $5,000 was really made by the company, as now seems to be suggested (appellant's brief, p. 43). Mr. Brady was cross-examined at length, and the city called for and introduced in evidence Mr. Brady's personal check drawn on his individual account. The city's counsel thereupon proceeded as follows (p. 242):

"[By city's counsel] Who first said anything about contributions here? Was it Mr. Mills or yourself? A. Mr. Mills.

Q. Now, what did he say? A. Well, he said the cost would probably be expensive, and that while he was a large stockholder, he ought not to be allowed to pay all the expense, that other large stockholders ought to contribute.

Q. What did you say? A. I agreed with him.

Q. Then what did he say? A. Oh, I don't remember what he said especially. I simply agreed that I would send him a contribution, and I did.

Q. Was anything said as to the amount? A. Well, I got an impression from what he said that $5,000 would be satisfactory, and I sent him that amount.

Q. Why did he say $5,000 would be satisfactory? A. I don't know that he said that. I got that impression from what he did say.

Q. Anyway, your recollection is that the $5,000

was fixed by him? A. I got the impression from what he said that if I sent $5,000 that would be satisfactory, and I sent him $5,000."

Mr. Brady further testified that the People's Company had nothing to do, directly or indirectly, with the contribution and that it was entirely a personal contribution. Thus after referring to the conversation with Mr. Mills, he testified (p. 240):

"Q. And what did you then do? A. I sent it to him.

"Q. A personal contribution? A. Entirely so.

"Q. Had the company anything to do, directly or indirectly, with that contribution? A. Not at all. They were never consulted about it.

"Q. Did you ever advise any of the officers of the company that you had made this personal contribution toward the expenses of this suit? A. I don't think so. If I did it was without any suggestion of their returning it. I don't think I did."

Mr. Brady further testified that he had never been reimbursed for the contribution (p. 249).

The propriety of Mr. Brady, as the second largest stockholder, thus contributing to the expenses of a suit in which he was vitally interested, ought to be clear and indisputable. Certainly it does not constitute evidence of collusion. *New Albany Waterworks Co.* v. *Louisville Banking Co.*, 122 Fed. Rep. 776, 778; *Consumers' Gas Trust Co.* v. *Quinby*, 137 Fed. Rep. 882, 883. That it constituted evidence of collusion would hardly have been seriously suggested had it not been for the fact that Mr. Brady was also vice-president of the company and as a director had proposed the resolution of January 29, 1903, in which the board had

declined to institute a new suit in the name of the company. This resolution was adopted upon the advice and responsibility of the counsel of the People's Company (pp. 204-205, 228-229, 256-257, 278-279). There is, however, no necessary inconsistency in a director voting to decline to authorize a suit in behalf of the company on the advice of the company's counsel and yet at the same time personally favoring any suit by a stockholder which might protect the stockholders' interests if the advice to the board and its action thereon should turn out to be mistaken or erroneous.

It is, of course, elementary that an officer acting personally and unofficially for the supposed protection of his individual personal interests would not bind or prejudice the company. Mr. Brady's voluntary contribution in his individual capacity made in May, 1903, furnishes no legal or moral evidence that he did not act in good faith in following the advice of the company's counsel at the board meeting of January 29, 1903, and his action as a director was not impugned by his subsequent payment to Mr. Mills. Indeed, even if his contribution in May, 1903, was inconsistent with his action as a director in January, no legitimate inference was to be drawn therefrom that *he and the whole board of directors* were acting on January 29th in pursuance of a fraudulent and collusive agreement with Mr. Mills, and that the advice of the company's counsel then given was not in good faith, but a mere pretense and subterfuge, nor could it tend to establish that the company had previously entered into a collusive agreement with Mr. Mills.

Yet this court is now asked to hold that Mr. Brady's

contribution in May, 1903, warrants the inference that all the directors and the counsel of the People's Company were acting in collusion with Mr. Mills when the board declined in January to institute a new suit. It is submitted that no such inference would be fair or just or legitimate. Such a ruling would have to disregard the uncontradicted and unimpeached testimony of Mr. Mills, of the officers of the company and of the company's counsel, Mr. Meagher, who fully explained the reasons why he and his associates, Judge Moran and Judge Sears, advised the board not to comply with Mr. Mills' request (pp. 255-258), and the court would have to infer collusion, which "implies the existence of fraud of some kind" (*Dickerman* v. *Northern Trust Company*, 176 U. S. 181, 190), from acts otherwise innocent and legal and which are clearly consistent with honesty of purpose and freedom from collusion. Moreover, if Mr. Mills had been a party to a secret collusive agreement with the directors to the effect that the company should fraudulently decline to sue in order that he might impose upon the circuit court of the United States a cause not properly within its jurisdiction, is it conceivable that he would have openly applied to the vice-president for a contribution a few days before the bill was actually filed? And if Mr. Brady and Mr. Mills had been parties to any such fraudulent scheme, is it conceivable that Mr. Brady would have sent his personal check to Mr. Mills and thus made a record of the fact of the payment which is now claimed to establish collusion? On the contrary, the very fact that Mr. Mills went to Mr. Brady as the

second largest stockholder and that Mr. Brady agreed to contribute to the expenses of the suit tends to show that so far as they were concerned they were not conscious of any secret collusive agreement to be concealed and that no such agreement in fact existed.

4.

As to Mr. Mills' testimony.

The testimony of the complainant, Mr. Mills, was characterized by evident truth and candor, although his memory was indistinct and confused as to several matters of dates and details. When we recall that he was over eighty years of age at the time the testimony was taken (p. 157), it is but just to make due allowance for infirmities of memory and some confusion as to dates and misunderstanding of questions and to accept his statement on cross-examination, in excuse for his failure to remember distinctly, viz. (p. 165) :

> "And I would like to remark here that my memory is not as sharp as it used to be about dates and conversations, and so forth, so that if I appear not to know it is a defect of the memory."

Mr. Brady also testified in regard to Mr. Mills' memory as follows (p. 240) :

> "He was not sure about anything, appeared to have lost all recollection of the conversations and everything else connected with it, excepting the fact that I had contributed."

There are, it is true, a few discrepancies in dates in Mr. Mills' testimony, and failure to remember conversations, but they are immaterial except when distorted and separated from the context or the accompanying expla-

nation. In Starkie on Evidence (10th ed.), pp. 830–831, the author well says:

> "Partial variances in the testimony of different witnesses on minute and collateral points, although they frequently afford the adverse advocate a topic for copious observation, are of little importance, unless they be of too prominent and striking a nature to be ascribed to mere inadvertence, inattention or defect of memory."

Thus, Mr. Mills stated on cross-examination that he had an impression that when he originally consulted Mr. Guthrie in 1902, the latter was then representing the company (p. 166). That this was an error was conclusively shown by the testimony of Mr. Knapp, Mr. Billings and Mr. Meagher to the effect that Mr. Guthrie did not represent the company in any way until July, 1903 (pp. 204, 205, 206, 221, 226, 258), and was then employed only for the purpose of arguing the pending appeal in the Supreme Court (pp. 226, 258). It is quite evident that the witness was confusing the years, and that as matter of fact Mr. Guthrie did not in any way represent the company until July, 1903. Indeed, Mr. Mills testified that his recollection was refreshed by a letter dated July 24, 1903 (p. 194), which, when read, will show that the information was undoubtedly communicated to him on that date.

Mr. Mills' memory was also indistinct in regard to the contribution of $5,000 made by Mr. Brady individually to the expenses of the suit. Mr. Mills could not recall any particular conversation with Mr. Brady on the subject and could only state his impression that Mr. Brady, as a large stockholder, had contributed to

the expenses of the suit and that "in some way I understood it was a contribution on account of the expenses of the suit" (p. 181).

Counsel for the city of Chicago, realizing the ease with which an old gentleman could be confused as to dates and time and the relation of different acts to each other as to time, made the most of this advantage, and endeavored to make it appear that Mr. Mills had no real knowledge of the steps that were being taken, and that his connection with the suit was a mere formality. We submit that this is not a fair inference from Mr. Mills' testimony. His letter to Mr. Guthrie, dated July 23, 1903 (p. 192), where he says that "I take it that the company is not anxious for an early time, but for my own satisfaction I should be pleased to know the probable date," clearly shows that at that time he was more active and had the matter better in mind than at the time of the trial, nearly three years afterwards. The lapse of time and the obvious infirmities due to his advanced age are a sufficient explanation of all minor inaccuracies in his testimony. He testified that he left the management of the suit entirely in his counsel's hands (pp. 169, 170, 197), which was a natural and proper thing to do, and he could not be expected to bear the details in mind several years afterwards.

It likewise appeared that Mr. Mills had misunderstood counsel and testified that the suit had been brought to confer jurisdiction on a court of the United States of a case which it would not otherwise have cognizance of. In regard to this point, the court below said (p. 386):

"The testimony relating to Mills' admissions is in-

conclusive. It impresses one upon reading it, rather as a misunderstanding of the question put, than as an admission of any agreement between Mills and the company; or any motive on his part, other than the lawful motive of bringing his suit in the court in which, under the constitution and laws of the United States, he is entitled to have it determined."

What actually occurred was as follows (p. 164):

"Q. Was the suit brought to confer on the court of the United States jurisdiction of a case which it would not otherwise have cognizance of?

Mr. Tone.—That is objected to as calling for a conclusion and incompetent.

The Examiner.—Note the objection.

A. I so understood it.

Q. Did you hear the question, Mr. Mills? A. I so understood it, yes, sir.

Q. You understood what? A. The question as put, if you will read it.

(Question read.)

Mr. Tone.—Same objection as before noted.

A. Yes, sir."

This was explained at p. 195 as follows:

"Q. At page 52 of the transcript you were asked the question as follows: 'Was the suit brought to confer on the court of the United States jurisdiction of a case which it would not otherwise have cognizance of?' And you answered: 'I so understood it.' Do you desire to make any correction or explanation of that answer?

Mr. Tone.—That is objected to on the ground that the question is itself incompetent, calling for a conclusion of law and of fact, and that witness' judgment and conclusion would not be competent evidence, and that it is not a subject-matter of expert testimony.

The Examiner.—The objection will be noted.

A. I don't think I properly understood the question.

Q. Had you any personal knowledge at that time of the legal questions involved as to jurisdiction of the state or federal courts?

Mr. Tone.—That is objected to as immaterial, what the complainant knew or did not know. His mental operations at that time not being a proper subject-matter of evidence.

The Examiner.—The objection will be noted.

The Witness.—What would be the question now?

(Question read.)

Mr. Tone.—Same objection as above noted.

A. I had no knowledge of the law on the question. I knew that Mr. Guthrie was to bring the suit in the United States Courts. The question of law in reference to the business I had no knowledge of.

Q. You knew that, did you not, from what Mr. Guthrie advised you?

Mr. Tone.—That is objected to also as suggestive and as calling for a conclusion rather than a fact and as incompetent because it is a communication between an attorney and his client, being alleged self-serving declarations in their own favor that are inadmissible in law.

The Examiner.—The objection will be noted.

A. Yes, sir."

Upon this testimony hangs the whole claim that Mr. Mills had himself confessed that the suit was *collusive*. It is, of course, obvious that Mr. Mills misunderstood the somewhat inartificial question of his counsel, and in this he was justified. The question was a formal one, founded upon the language of the ninety-fourth rule. What the witness undoubtedly understood was that, if he sued, the suit was to be brought in the federal court, and that the company's suit had been dis-

missed for want of jurisdiction. It is clear that the question did not call upon the witness to characterize as collusive the present suit or as false the sworn statement of his bill, twice verified under oath by himself, or to contradict his own testimony, and equally certain that the witness did not answer that he understood the suit was a collusive one or that it was brought under any agreement or understanding with the company in regard thereto. He had previously testified that he had had no agreement whatever with the company in regard to the institution of this suit, that he had consulted counsel on his own account, and that the suit had not been brought at the request of the company (pp. 163–165). His inadvertent and unintentional statement of a pure conclusion could not overthrow the clear proofs that the suit was brought without any agreement or understanding whatever with the company, in antagonism to the policy then being pursued by its legal advisers, without any agreement with it, and solely and honestly to protect the enormous property interests, then over $2,200,000, which he had in the People's Company.

The fact that Mr. Mills and his counsel expected, if suit were brought, to resort to a federal court for the protection of his large property rights in a case eminently calculated to excite interested local prejudice, furnishes no legitimate ground for criticism or suspicion. Nor is it extraordinary or suggestive of collusion that Mr. Mills understood that he could sue in a United States court if the company refused to sue. Such was the law. As a non-resident of Chicago, he naturally preferred the national tribunals. Would not any res-

ident of Chicago suing in New York in such a case prefer and seek a federal court? It would, indeed, be extraordinary if the federal courts should question the propriety in any case of a non-resident citizen desiring to seek the protection of a court of the United States, when one of the fundamental objects and "blessings" in the minds of the framers of the Constitution was to guarantee to every citizen non-resident of a state the constitutional right to appeal for justice and protection to national tribunals. As Mr. Justice Swayne said in *Davis* v. *Gray*, 16 Wall. 203, 221 :

> "The wise policy of the Constitution gives him a choice of tribunals. In the former [*i. e.*, a national court] he may hope to escape the local influences which sometimes disturb the even flow of justice."

See also *Smyth* v. *Ames*, 169 U. S. 466, at p. 517.

If, therefore, Mr. Mills desired to sue in order to have the questions decided in a court of the United States rather than in a state court, it would establish nothing tending to prove the existence of a *collusive agreement* on his part with the company to fraudulently impose upon the court by a sham demand and sham refusal to sue on the part of the directors and stockholders of the People's Company.

To repeat, the witness certainly did not state that he understood the suit was *collusively* brought or that there existed any agreement between himself and the company. Any such inference would be in conflict with all the facts proved as to what had taken place. Such a statement on his part as is quoted above, subsequently corrected, was at most a mere conclusion ; the city's

counsel at the time so insisted (p. 164), and the court would still have to draw its own inferences from the facts in evidence. And it is submitted that the facts in evidence do not warrant the inference that there existed an agreement or understanding between Mr. Mills and the People's Company to enable him to bring a collusive suit, but that on the contrary the evidence distinctly shows that the suit was brought in good faith without any agreement whatever and for the purpose of protecting the complainant's interests as a stockholder.

Moreover, the question as to whether or not the suit was collusively brought for the purpose of conferring jurisdiction upon the federal court could not be determined by the statement of the witness that he understood the purpose of the suit was to confer jurisdiction on the federal court. He might have such a purpose without the slightest collusion with the company. If there existed at the time a *bona fide* difference between the corporation and the stockholder, between his counsel and the company's counsel, and the corporation refused to comply with the demand which the stockholder as such had the right to make, and such refusal to take action was made without any agreement with him, then as a matter of law the suit would not be collusively brought for the purpose of conferring jurisdiction upon a federal court. Mr. Mills misconceived the question put to him by his counsel, and his subsequent explanation clearly showed that what he understood was that the suit was to be brought in the federal court and that this was the basis of his answer to the question referred to and the extent to which his testimony should

be taken. Particularly would he so understand in view of the fact that the company's suit had been dismissed by the federal court for want of jurisdiction. Very few, if any, laymen would be able to apprehend the purport of the question as put to Mr. Mills and answer it in the sense that a lawyer would. It would be a most natural understanding of such a question that his suit was to be brought in the federal court if the company refused to sue and that all steps to protect his interests would be in the federal court.

We most earnestly submit that a question of this importance, involving a charge of fraud and imposition on the court, ought not to be disposed of upon the mere misapprehension of a layman, whose faculties were affected by age, in regard to a question involving legal terms and at most a conclusion in conflict with the most positive testimony to the contrary not only of himself but of four other witnesses who were uncontradicted and unimpeached.

CONCLUSION.

It is, therefore, submitted, if the court shall hold that any definite question of jurisdiction was duly certified, that the findings of the court below should be affirmed.

Washington, December 10, 1906.

WILLIAM D. GUTHRIE,
JOHN J. HERRICK,
I. K. BOYESEN,
of counsel for appellee.

Appendix.

Act of May 18, 1905.

AN ACT to confer upon the city of Chicago the power and authority to sell surplus electricity and to fix the rates and charges for the supply of gas and electricity, for power, heating and lighting furnished by any individual, company or corporation to said city of Chicago, and the inhabitants thereof. Approved May 18, 1905. In force July 1, 1905 (Laws 1905, p. 111).

§1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That upon the adoption of this act in the manner hereinafter provided, the city of Chicago shall have the power and authority to sell surplus electricity for heat, light and power within the corporate limits of said city, and is hereby empowered to prescribe by ordinance maximum rates and charges for the supply of gas and electricity for power, heating and lighting furnished by any individual, company or corporation to such city and the inhabitants thereof. Such rates and charges to be just and reasonable and may be fixed for a period not exceeding five years and in case the corporate authorities of any such city shall fix unjust and unreasonable rates and charges, the same may be reviewed and determined by the circuit court of the county in which said city is situated. *Provided*, that nothing in this act contained shall be construed as enlarging the powers now conferred by law upon said city to own, construct or acquire electric lighting plants, or as permitting said city to sell electricity so long as the same is needed for light, heat and power for municipal purposes.

§2. This act shall not be in force until the question of its adoption shall first have been submitted to the electors of such city and approved by a majority of those voting thereon. The city council of the city of Chicago may direct by ordinance that the question of the adoption of this act by the city of Chicago, be submitted to popular vote at any general, city or special election in and for the entire city coming not sooner than thirty (30) days from and after the passage of such ordinance. The city clerk of said city shall certify the passage of such ordinance to the

proper election officials and it shall thereupon be the duty of such election officials to submit the question of the adoption of this act by the city of Chicago to popular vote. The city clerk of the city of Chicago shall also give at least thirty (30) days' notice of such election by publishing a notice thereof in one or more newspapers of general circulation within such city.

§3. The ballots to be used at such election shall be in the following form:

"For the adoption of an act entitled 'An Act to confer upon the city of Chicago, power and authority to sell surplus electricity, and to fix the rates and charges for the supply of gas or electricity, and to fix the rates and charges for the supply of gas or electricity for power, heating and lighting furnished by any individual, company or corporation to said city of Chicago and the inhabitants thereof.'"	Yes	
	No	

If a majority of the votes cast upon said proposition at said election shall be voted for the adoption of this act it shall thereby and thereupon be adopted by and be in force in the city of Chicago.

Ordinance of February 8, 1906.

Be it Ordained by the City Council of the City of Chicago:

SECTION 1. That no corporation, company or companies, firm or person, manufacturing, selling, supplying or distributing gas in the City of Chicago for illuminating or for fuel purposes, shall charge, exact, demand or collect from any consumer thereof, for the next five years from and after the taking effect of this ordinance, more than the sum of eighty-five cents for one thousand cubic feet of gas consumed or used. Said sum of eighty-five cents per one thousand cubic feet of gas shall be the net price charged, exacted, demanded or collected from each consumer; provided, however, that any corporation, company or companies, firm or person, distributing or selling gas in the

City of Chicago, may charge ninety-five cents per one thousand cubic feet of gas furnished to such consumer in all cases where payment at the rate of eighty-five cents per one thousand cubic feet is not made to said corporation, company or companies, firm or person, within ten days from the date of bill for same. The illuminating gas so furnished shall afford a light of not less than twenty-two candle power, to be measured and ascertained at the places of consumption in said city by the most modern appliances known to science for measuring the candle power of illuminating gas.

Provided, however, that for gas consumed by the City of Chicago the price charged per one thousand cubic feet shall not exceed eighty-five cents regardless of date of payment for same.

SEC. 2. That any company, corporation, person or persons, who shall, during the five year period above mentioned, remove any meter or meters from the house, store, factory or premises of any consumer of gas in the City of Chicago, against the will and consent of any such consumer of gas who is willing to pay for gas furnished him, it or them by such company, corporation, person or persons, and tenders the amount due at the price established and fixed in Section 1 of this ordinance, shall be subject to a penalty of not less than twenty-five dollars nor more than two hundred dollars for each and every offense; provided, however, that any company, corporation, person or persons furnishing gas to consumers in the City of Chicago shall have the right to remove any meter or meters for the purpose of repairing the same, on condition that such meter or meters so removed shall be replaced, or a new one substituted in its place, within twenty-four hours of the time of the removal of any such meter or meters.

SEC. 3. That any company, corporation, person or persons who shall, in violation of the provisions of the preceding sections, charge or require the City of Chicago, or any citizen thereof, or any consumer of gas therein, to pay for gas furnished to it or them, or either of them, during the five year period mentioned in Section 1, a sum in excess of the rates specified in said Section 1, or who shall, during said period, furnish to the said City of Chicago, or any citizen thereof, manufactured gas of less than twenty-two candle power, shall be subject to a penalty of not less than twenty-five dollars, nor more than two hundred dollars, for each and every offense.

SEC. 4. That the ordinance passed by the City Council of the City of Chicago on October 15, 1900, regulating the maximum prices of gas to be charged to consumers and to the City of Chicago by persons, firms or corporations manufacturing, selling, or distributing gas within the City of Chicago be and the same is hereby repealed, except as hereinafter provided.

SEC. 5. That the repeal of the ordinance mentioned in the preceding section shall not affect suits pending or rights existing at the time this ordinance takes effect or penalties then incurred, but the City of Chicago and all persons, firms, companies or corporations who were consumers of gas within the City of Chicago during any portion of the time said ordinance was in effect, shall hereafter have the right, severally and respectively, to bring and maintain such suit or suits in any court or courts of competent jurisdiction for the purpose of recovering any and all penalties, demands, overcharges or claims based on or growing out of the rights conferred by said ordinance of October 15, 1900, in the same manner and to the same extent as if said ordinance had not been repealed; and the said ordinance of October 15, 1900, shall continue in full force and effect for all the purposes aforesaid.

SEC. 6. That any company or companies manufacturing or distributing gas may purchase or sell gas to or from any other company or companies manufacturing or distributing gas in the City of Chicago; and any such company or companies may lease and demise to any other company or companies, mains, pipes, meters, works, plant and appliances, or any part thereof, of such company or companies, on such terms as said companies may agree upon, and such other company or companies may take and acquire the mains, pipes, meters, works, plant and appliance, or any part thereof, so leased and demised, and thereafter operate the same and manufacture and distribute gas by means thereof; and such purchase and sale of gas, or such lease and demise of pipes, mains, meters, works, plant and appliances, or any part thereof, shall never be held or construed to be an abandonment or waiver of any ordinance rights of the company or companies so selling gas or leasing and demising its mains, pipes, meters, works, plant and appliances, or any part thereof, nor as authorizing the assignment of any ordinance vested in the company so selling gas, or leasing and demising its mains, pipes, meters, works, plant and appliances, or any part thereof, nor as

authorizing a lease and demise of franchise rights not authorized by the laws of the State of Illinois.

Provided, however, that if the State of Illinois, or the City of Chicago, or any other governmental authority or agency shall hereafter at any time after said period of five years regulate, or seek to regulate the price or quality of gas furnished or sold or to be furnished or sold in the City of Chicago by any of the said companies, the said companies and each of them expressly agree that no purchase or sale, contract, agreement, lease or demise authorized by this section, or by this ordinance shall operate to deprive or shall be held or considered as depriving or having deprived said State, City, or other governmental authority or agency of the right or any right to make such regulation after said period of five years or as lessening in any way such right of regulation ; and the said companies and each of them agree that neither they nor any of them will or can set up or urge any of the provisions of this ordinance or any purchase, sale, contract, agreement, lease or demise authorized herein or hereby for the purpose or with the effect of obtaining or fixing any higher price or lower quality for gas sold or furnished in said City of Chicago than the price or quality which may at any time after said period of five years be fixed or established by said State, or City, or any other governmental authority or agency.

It is expressly understood and agreed, however, that none of said companies by accepting this ordinance, or by reason of any of the provisions thereof, concedes that the City of Chicago has now or may hereafter have any power or authority to regulate the price or quality of gas furnished or used in said City, but said companies and each of them expressly agree to comply with the terms and provisions of section 1 of this ordinance as to the price and quality of gas furnished by said companies or any of them during the said period of five years fixed therein.

Sec. 7. Section 13 of the ordinance passed February 25, 1895, and accepted March 4, 1895, granting the right to the Ogden Gas Company to construct, maintain and operate gas works in the City of Chicago and Section 12 of the ordinance passed July 23, 1894, accepted August 22, 1894, granting the right to the Universal Gas Company to construct, maintain and operate gas works within the City of Chicago, and each of said sections shall be and they are hereby repealed; provided, however, that nothing herein contained shall ever be held or construed as in any manner

prejudicing or affecting the right of the City of Chicago to purchase the entire plant of said Ogden Gas Company and all its property and effects of every kind and description within the City of Chicago, at the appraised value thereof, at the time and in the manner and subject to the terms and conditions expressed in Section 14 of said ordinance granting to the Ogden Gas Company the right to construct, maintain and operate gas works in the City of Chicago, nor as in any manner prejudicing or affecting the right of the City of Chicago to purchase the entire plant of said Universal Gas Company and all its property and effects of every kind and description within the City of Chicago, at the appraised value thereof at the time and in the manner and subject to the terms and conditions expressed in Section 13 of the said ordinance granting the right to the Universal Gas Company to construct, maintain and operate gas works within the City of Chicago.

SEC. 8. The Ogden Gas Company and any company or companies manufacturing or distributing gas, to whom it may sell gas or to whom it may lease and demise its mains, pipes, meters, works, plant and appliances, or any part thereof, as hereinbefore authorized, are hereby released and absolved from the payment, from and after the taking effect of this ordinance, of the compensation provided to be paid to the City of Chicago in and by Section 9 of said ordinance passed February 25, 1895, granting to said Ogden Gas Company the right to construct, maintain and operate gas works in the City of Chicago, which said Section 9 of said ordinance be and it is hereby repealed; and the Universal Gas Company and any company or companies manufacturing or distributing gas, to whom it may sell gas or to whom it may lease and demise its mains, pipes, meters, works, plant and appliances, or any part thereof, as hereinbefore authorized, are hereby released and absolved from the payment, from and after the taking effect of this ordinance, of the compensation provided to be paid to the City of Chicago in and by Section 8 of said ordinance passed July 23, 1894, granting to said Universal Gas Company the right to construct, maintain and operate gas works in the City of Chicago, which said Section 8 of said ordinance be and it is hereby repealed. And the People's Gas Light and Coke Company, the Ogden Gas Company and the Universal Gas Company are hereby severally released and discharged from all obligations to make payment of any compensation to the City of Chicago under said ordinances

or otherwise; provided, however, nothing herein contained shall ever be construed as releasing or waiving the existing obligation to pay, from and after the passage and taking effect of this ordinance, five per cent. of the gross receipts from the sale of natural gas, as hereinafter mentioned.

SEC. 9. The amount due from the People's Gas Light and Coke Company to the City of Chicago up to the time of taking effect of this ordinance, being five per cent. of the gross revenue derived from the sales of natural gas, shall be paid to the City of Chicago by crediting said amount upon the sum of upwards of $1,300,000 due from the City of Chicago to the People's Gas Light and Coke Company for gas furnished for lighting the streets of the City of Chicago by said the People's Gas Light and Coke Company. The People's Gas Light and Coke Company shall release and discharge the City of Chicago from the payment of the net amount due from the City of Chicago for gas supplied by said the People's Gas Light and Coke Company for lighting the streets of the City of Chicago. The Ogden Gas Company shall pay in cash to the City of Chicago the amount due up to the time of taking effect of this ordinance, being upwards of $117,000, on account of the compensation provided to be paid in and by section 9 of said ordinance passed February 25, 1895. The City of Chicago shall release all claims it has against the Universal Gas Company on account of claims for unpaid compensation under said ordinance passed July 23, 1894.

The Universal Gas Company shall release and discharge the City of Chicago from all claims it has against said City of Chicago for a refund of moneys heretofore deposited with the City of Chicago by the said Universal Gas Company.

The People's Gas Light and Coke Company shall pay the five per cent. on the gross revenue derived from the sales of natural gas in the City of Chicago from and after the taking effect of this ordinance.

The bill filed by the City of Chicago against the Ogden Gas Company, the People's Gas Light and Coke Company, and the Farmers' Loan and Trust Company, pending in the Circuit Court of the United States for the Northern District of Illinois, and being general number 25879 of said court, shall be forthwith dismissed by the City of Chicago without costs to either party.

SEC. 10. Nothing in this ordinance contained shall extend

or enlarge the period within which any of the companies mentioned herein or any grantee or lessee thereof is now, or may hereafter be authorized by ordinance, or otherwise, to manufacture, sell or supply gas in the said City of Chicago or to occupy or use any of the streets, alleys or public grounds in said city or any part thereof.

SEC. 11. This ordinance shall first be published in the manner provided by law, and ten days after such publication has been made this ordinance shall take effect, provided the People's Gas Light and Coke Company, the Ogden Gas Company and the Universal Gas Company shall severally accept the same in writing, and the Ogden Gas Company pay the amount in cash due the City of Chicago from said Ogden Gas Company, and the People's Gas Light and Coke Company acknowledge to the City of Chicago payment in full of all net sums due it from the City of Chicago on account of gas furnished for lighting the streets of the City of Chicago, and the Univeral Gas Company shall, in writing, release and discharge the City of Chicago of and from the payment of all sums due to said Universal Gas Company, on account of moneys heretofore deposited with the City of Chicago by said Universal Gas Company, all during said period of ten days; and upon the taking effect of this ordinance, this ordinance shall constitute a contract by and between the City of Chicago and said the People's Gas Light and Coke Company, and by and between the City of Chicago and said Ogden Gas Company, and by and between the City of Chicago and said Universal Gas Company.

STATE OF ILLINOIS, }
County of Cook, } ss.:

I, A. C. ANSON, City Clerk of the City of Chicago, do hereby certify that the above and foregoing is a true and correct copy of an ordinance concerning the price of gas in the City of Chicago, passed by the City Council of the City of Chicago on the 8th day of February, A. D. 1906, original of which ordinance is on file in this office and that I am the lawful custodian of the same.

Witness my hand the corporate seal of said City of Chicago this 9th day of February, A. D. 1906.

(sd.) A. C. ANSON,
City Clerk.

[SEAL.]

Supreme Court of the United States.

No. 286.—October Term, 1906.

City of Chicago, Appellant, vs. Darius O. Mills. } Appeal from the Circuit Court of the United States for the Northern District of Illinois.

[February 4, 1907.]

Mr. Justice Day delivered the opinion of the Court.

This case is here upon a question of jurisdiction of the Circuit Court of the United States for the Northern District of Illinois to entertain the suit. 26 Stat. 826. The case originated in a bill filed in that court by the complainant, Darius O. Mills, a citizen of California, as a stockholder in the People's Gas, Light and Coke Company, a corporation of the State of Illinois, to restrain the city of Chicago from enforcing a certain ordinance limiting the right of the gas company as to charges for furnishing gas.

Complainant averred a demand of the directors that an action be brought by the company to restrain the city from enforcing the ordinance, and alleged compliance with the ninety-fourth equity rule, and the refusal of the company to bring the action.

The original bill alleged that the ordinance impaired the obligation of the contract contained in the charter of the gas company, in contravention of the contract clause of the Federal Constitution; and, also, that the ordinance was illegal in that the city had no power to pass it.

The ordinance thus complained of was adopted by the city of Chicago, October 15, 1900, and provided that charges for gas in excess of 75 cents per 1,000 cubic feet should be illegal, and fixed a penalty of not less than $25 or more than $200 for each and every violation of the ordinance.

The objection made to the jurisdiction of the Circuit Court, and which is said to be established in the record and duly presented here, is based upon the allegation that the suit by Mills was brought in the Federal court by collusion between him and the gas company, and for the fraudulent purpose of invoking the jurisdiction of the Federal court concerning a controversy which was really between the company and the city of Chicago, parties lacking the requisite diversity of citizenship to maintain the suit in the Federal courts.

The record discloses that the appeal was allowed to this court solely upon the question of the jurisdiction of the court as a Circuit Court of the United States. A certificate entered the same term at which the appeal

was allowed sets forth that the city objected to the jurisdiction of the court as a Federal court, and that the appeal was prayed solely upon the question of jurisdiction of the court as a Circuit Court of the United States, and that the appeal was granted solely upon the question of jurisdiction.

Portions of the proceedings, including the testimony on the question of jurisdiction, duly signed and sealed and made part of the record, are certified to this court by certificate in the form of a bill of exceptions. *In re Lehigh Mining Manufacturing Co.* 156 U. S. 322; *Nichols Lumber Co.* v. *Fransom*, decided at this term.

A preliminary objection is made that the certificate does not show whether the jurisdictional question arose from insufficient amount, want of diversity of citizenship, collusion or otherwise. But we are of the opinion that an examination of the record, aided by the opinion of the court contained therein, and made part thereof, distinctly shows that the question of jurisdiction passed upon concerned the collusive character of the action of the complainant.

We think this brings the case within the ruling in *Smith* v. *McKay*, 161 U. S. 355, in which the court, looking into the character of the appeal, the certificate of the court and the certified copy of the opinion made part of the record, sustained the court's jurisdiction, citing, with approval, *Shields* v. *Coleman*, 157 U. S. 168, and *In re Lehigh Mining Manufacturing Company*, 156 U. S. 322.

The Circuit Court, after an examination of the testimony, reached the conclusion that the action was not collusive, and upon final decree granted a perpetual injunction against the enforcement of the ordinance in question. On this appeal we are only concerned with the correctness of the conclusion sion reached in the Circuit Court as to the question of jurisdiction. This question is before us upon this record. *Wetmore* v. *Weymere*, 169 U. S. 115. In order to determine it it is necessary to consider briefly as may be the facts shown in this record.

The ordinance in question was passed October 15, 1900. The People's Gas, Light and Coke Company, on the 21st of December, 1900, brought a suit in the Circuit Court of the United States for the Northern District of Illinois, seeking to enjoin enforcement of the ordinance upon the ground that it impaired the obligation of its charter contract, denied equal protection of the laws, and amounted to a confiscation of its property; and upon the further ground that no power had been conferred upon the city of Chicago by the legislature of Illinois to thus regulate the price of gas.

It is unnecessary to recite all of the proceedings of that suit in detail. The history of the litigation will be found in the opinion of the Chief Justice when the case came here from the Circuit Court on appeal, 194 U. S. 1.

To the bill as originally filed in that case the city of Chicago filed a general demurrer, and the Circuit Court, holding that no constitutional right of the company was impaired, decided that its jurisdiction would not extend to the question of the power of the council to pass the ordinance in question, and that such a question was one primarily for the State courts; thereupon the company filed an amended bill, limiting its rights to the alleged impairment of its contract. The city of Chicago also demurred to the amended bill, and upon the hearing of the demurrer it was sustained and the bill dismissed for want of jurisdiction, and a final decree was entered to that effect. An appeal was thereupon taken to this court.

When the litigation had progressed thus far, complainant Mills, who was the largest stockholder in the company, consulted counsel in New York with a view to protecting his interests. Counsel having examined the record prepared a letter dated December 16, 1902, addressed to the directors of the gas company and signed by complainant, in which he set forth that the proceedings in the suit concerning the ordinance reducing the price of gas to 75 cents per 1,000 cubic feet had been submitted to his counsel, together with a copy of the opinion of the Circuit Court, and that an appeal was then pending in the Supreme Court of the United States; the advice of his counsel that that suit might not adequately protect his interests, as the bill was dismissed for want of jurisdiction and that the Supreme Court might limit the decision of the case to the question of jurisdiction. And, further, that it did not involve the question of the power of the council of the city of Chicago to reduce the rates of the company. He then requested the institution of a suit against the city of Chicago at the earliest practicable moment for the purpose of preventing the enforcement of the ordinance, upon the ground that it impaired its charter contract and that the council had no power to pass it. The letter further expounded the necessity of resorting to a court of equity for protection of the company's rights.

The record discloses that the company's counsel came to New York, where a conference was had with the counsel retained by Mills, and a difference of opinion was developed as to the propriety and advisability of a new suit which would cover the points in difference. The result of this conference was that the company's counsel notified counsel for Mills that he should advise the board to decline the request to bring a new suit.

On January 29, 1903, the company wrote to Mills, declining to begin the suit, and sent a copy of the resolution reciting the belief of the board that for the company to institute further legal proceedings to test the validity of the ordinance of October 15, 1900, would excite public

prejudice against the company, which at that time it was deemed of great importance to avoid, and afterwards, at the annual meeting of the stockholders of the company, a resolution directing the beginning of the suit was defeated.

The question of jurisdiction must be decided, having reference to the attitude of the case at the date the bill was filed, on June 8, 1903. *Kirby* v. *American Soda Fountain Co.*, 194 U. S. 141, 145, 146. As to the refusal of the company to institute a new suit, there is nothing in the record to show any concert of action between complainant and the company. At that time his counsel in New York was not concerned in the litigation in Chicago or in the appeal to this court. As the case brought by the gas company then stood, it had been dismissed for want of jurisdiction, and an appeal taken from that decree of dismissal. The case did not necessarily involve the question of contract rights, and did not embrace the question of power of the city.

In this attitude of affairs counsel might well advise that the protection of the stockholders' interest required the beginning of a suit which should embrace the vital questions in issue. There was a sharp difference of views between the representatives of Mills and those of the company's solicitors as to the advisability of bringing an action.

For the prudential reasons outlined in their letter of January 29, 1903, above referred to, the directors of the company declined to bring the suit. After the judgment of the Circuit Court was affirmed in this court, the question of the power of the city to pass the ordinance was left undecided, and was subsequently litigated to a final decree in favor of the contention made in the suit begun by Mills.

It is true that upon the hearing of the demurrer in this action the Circuit Court ordered a decree correcting its former decree in the gas company suit so as to show that the court decided the case upon the merits as to the allegations as to contract, and dismissed the bill without prejudice to the bringing of any other suit to test the power of the city.

The corrected decree was brought before this court in the then pending appeal of the gas company. 194 U. S. 1.

After the decision in this court, affirming the decree in the gas company suit, an amended bill was filed by complainant Mills, based solely upon the alleged want of power of the city council of Chicago to pass the ordinance in controversy, which resulted in the decree to which we have referred, enjoining the enforcement of the ordinance, for the reason that the city council of Chicago had no power to pass the same.

As we have said, we think the record establishes that complainant and his counsel honestly believed that such new suit was necessary to protect the

stockholders' interests. There is an entire lack of testimony to show any collusive action at the time of the beginning of the suit.

It is true that subsequent events made it to the interest of the company to make common cause with Mills against the enforcement of the ordinance in question, but when he began his suit no proceedings were pending which involved the important question of the power of the city upon which the complainant ultimately prevailed.

It is true that an officer of the company, who was the next largest stockholder to Mills, contributed to the expenses in this suit; but he testified, and there is nothing in the record to contradict him, that he paid this money from his own resources without actual repayment or any understanding with the company that he should be reimbursed.

It is true that Mills' counsel was retained in the suit in this court after the beginning of his suit in Chicago.

It is also true that, in answering to a question put in the language of the ninety-fourth rule, as to whether the suit was brought to confer upon the Circuit Court of the United States jurisdiction in a case of which it would not otherwise have cognizance, complainant answered that he so understood it, but subsequently said that he did not understand the question. This admission, intentionally made, would not necessarily show collusion. But we think that it was not the purpose of the complainant to say more than that he expected his action to be brought in the United States court. When a citizen of one State has a cause of action against a citizen of another State which he may prosecute lawfully in a Federal court, and when the suit is free from fraud or collusion, his motive in preferring a Federal tribunal is immaterial. *Blair* v. *Chicago*, 201 U. S. 400, 408, and previous cases in this court therein cited.

Upon the whole record we agree with the Circuit Court that the testimony does not disclose that the jurisdiction of the Federal court was collusively and fraudulently invoked, and the judgment below will be

Affirmed.

Dissenting: Mr. Chief Justice FULLER and Mr. Justice HARLAN.

True copy.

Test:

Clerk Supreme Court, U. S.